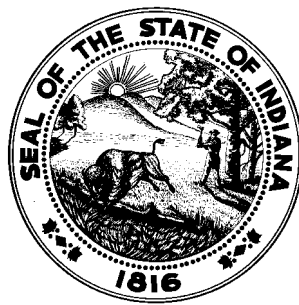


# **INDIANA UNIFORM CONSUMER CREDIT CODE**

IC Title 24, Article 4.5

As Amended Through March 14, 2002



**NON-DEPOSITORY DIVISION  
DEPARTMENT OF FINANCIAL INSTITUTIONS**

402 West Washington Street, Room W-066  
Indianapolis, Indiana 46204

# IC 1971, Title 24, ARTICLE 4.5

## UNIFORM CONSUMER CREDIT CODE

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## CHAPTER 1. General Provisions and Definitions.

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## Part 1. Short Title, Construction, General Provisions

### 24-4.5-1-101 Short title

Sec. 101. Short Title—This Article shall be known and may be cited as Uniform Consumer Credit Code. *(Formerly: Acts 1971, P.L.366, SEC.2)*

### 24-4.5-1-102 Purposes; rules of construction

Sec. 102. Purposes; Rules of Construction (1) This Article shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this Article are:

- (a) to simplify, clarify and modernize the law governing retail installment sales, consumer credit, small loans and usury;
- (b) to provide rate ceilings to assure an adequate supply of credit to consumers;
- (c) to further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost;
- (d) to protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors;
- (e) to permit and encourage the development of fair and economically sound consumer credit practices;
- (f) to conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act; and
- (g) to make uniform the law including administrative rules among the various jurisdictions.

(3) A reference to a requirement imposed by this Article includes reference to a related rule of the department adopted pursuant to this Article.

(4) A reference to a federal law in IC 24-4.5 is a reference to the law in effect December 31, 2000. *(Formerly: Acts 1971, P.L.366, SEC.2.) As amended by P.L.14-1992, SEC.2; P.L.122-1994 SEC.1; P.L.45-1995, SEC.2; P.L.176-1996, SEC.1; P.L.172-1997, SEC 1.; P.L.80-1998, SEC.2; P.L. 23-2000, SEC.1; P.L.134/63-2001, SEC.1.)*

### 24-4.5-1-103 Supplementary general principles of law applicable

Sec. 103. Unless displaced by the particular provisions of the Article, the Uniform Commercial Code (IC 26-1) and the principles of law and equity (including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause) shall supplement its provisions. *(Formerly: Acts 1971, P.L.366, SEC.2) As amended by P.L.152-1986, SEC.57.*

### 24-4.5-1-104 Construction against implicit repeal

Sec. 104. Construction Against Implicit Repeal—This Article being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided. *(Formerly: Acts 1971, P.L.366, SEC.2)*

### 24-4.5-1-105 Severability

Sec. 105. Severability—If any provisions of this Article or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this Article which can be given effect without the invalid provision or application, and to this end the provisions of the Article are severable. *(Formerly: Acts 1971, P.L.366, SEC.2)*

**24-4.5-1-106 Adjustment of dollar amounts**

Sec. 106. (1) The dollar amounts in this article designated as subject to change shall change, as provided in this section, according to the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items, 1957-59 equals 100, compiled by Bureau of Labor Statistics, United States Department of Labor, and referred to in this section as the Index. The Index for October, 1971, is the Reference Base Index.

(2) The dollar amounts shall change on July 1 of each even-numbered year if the percentage of change, calculated to the nearest whole percentage point, between the Index at the end of the preceding year and the Reference Base Index is ten percent (10%) or more, except that:

(a) the portion of the percentage change in the Index in excess of a multiple of ten percent (10%) shall be disregarded and the dollar amounts shall change only in multiples of ten percent (10%) of the amounts on March 5, 1971;

(b) the dollar amounts shall not change if the amounts required by this section are those currently in effect pursuant to this article as a result of earlier application of the section; and

(c) in no event shall the dollar amounts be reduced below the amounts appearing in this article on March 5, 1971.

(3) If the Index is revised after December 1967, the percentage of change shall be calculated on the basis of the revised Index. If the revision of the Index changes the Reference Base Index, a revised Reference Base Index shall be determined by multiplying the Reference Base Index by the ratio of the revised Index to the current Index, as each was for the first month in which the revised Index is available. If the Index is superseded, the Index is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for consumers.

(4) The department shall issue an emergency rule announcing:

(a) on or before April 30 of each year in which dollar amounts are to change, the changes in dollar amounts required by subsection (2); and

(b) promptly after the changes occur, changes in the Index required by subsection (3), including, when applicable, the numerical equivalent of the Reference Base Index under a revised Reference Base Index and the designation or title of any index superseding the Index.

(5) A person does not violate this article through a transaction otherwise complying with this article if the person relies on dollar amounts either determined according to subsection (2) or appearing in the last rule of the department announcing the then current dollar amounts. *(Formerly: Acts 1971, P.L.366, SEC.2; Acts 1972, P.L.182, SEC.1; Acts 1972, P.L.182, SEC.2.) As amended by P.L.152-1986, SEC.58; P.L.3-1990, SEC.84; P.L.14-1992, SEC.3; P.L.122-1994, SEC.2.*

**24-4.5-1-107 Waiver; agreement to forego rights; settlement of claims**

Sec. 107. Waiver; Agreement to Forego Rights; Settlement of Claims—(1) Except as otherwise provided in this Article, a buyer, lessee, or debtor may not waive or agree to forego rights or benefits under this Article.

(2) A claim by a buyer, lessee, or debtor against a creditor for an excess charge, other violation of this Article, or civil penalty, or a claim against a buyer, lessee, or debtor for default or breach of a duty imposed by this Article, if disputed in good faith, may be settled by agreement.

(3) A claim, whether or not disputed against a buyer, lessee or debtor may be settled for less value than the amount claimed.

(4) A settlement in which the buyer, lessee, or debtor waives or agrees to forego rights or benefits under this article is invalid if the court as a matter of law finds the settlement to have been unconscionable at the time it was made. The competence of the buyer, lessee, or debtor, any deception or coercion practiced upon him, the nature and extent of the legal advice received by him, and the value of the consideration are relevant to the issue of unconscionability. *(Formerly: Acts 1971, P.L.366, SEC.2)*

**24-4.5-1-108 Effect of article on powers of organizations**

Sec. 108. Effect of Article on Powers of Organizations—(1) This Article prescribes maximum charges for all creditors, except lessors and those excluded (IC 24-4.5-1-202), extending consumer credit, including consumer

credit sales (IC 24-4.5-2-104), consumer loans (IC 24-4.5-3-104), and consumer related sales and loans (IC 24-4.5-2-602 and IC 24-4.5-3-602), and displaces existing limitations on the powers of those creditors based on maximum charges.

(2) With respect to sellers of goods or services, small loan companies, licensed lenders, consumer and sales finance companies, industrial loan and investment companies, and commercial banks and trust companies, this Article displaces existing limitations on their powers based solely on amount or duration of credit.

(3) Except as provided in subsection (1) and IC 24-4.6-1, this Article does not displace limitations on powers of credit unions, savings banks, savings or building and loan associations, or other thrift institutions whether organized for the profit of shareholders or as mutual organizations.

(4) Except as provided in subsections (1) and (2), this Article does not displace:

(a) limitations on powers of supervised financial organizations (IC 24-4.5-1-301) with respect to the amount of a loan to a single borrower, the ratio of a loan to the value of collateral, the duration of a loan secured by an interest in land, or other similar restrictions designed to protect deposits; or

(b) limitations on powers an organization is authorized to exercise under the laws of this State or the United States.

*(Formerly: Acts 1971, P.L.366, SEC.2; Acts 1974, P.L.115, SEC.3.) As amended by P.L.14-1992, SEC.4; P.L.122-1994, SEC.3.*

### **24-4.5-1-109 Persons licensed or authorized on October 1, 1971**

Sec. 109. All persons licensed on October 1, 1971, under;

- (1) IC 24-5-4 (before its repeal on October 1, 1971)
- (2) IC 28-7-4 (before its repeal on October 1, 1971)
- (3) IC 28-7-2 (before its repeal on October 1, 1971)
- (4) IC 28-5-1-4;

are licensed to make supervised loans under this article. All provisions of this article apply to the persons previously licensed or authorized. The department may deliver evidence of licensing to the persons previously licensed or authorized. *As added by P.L.5-1988, SEC.128. Amended by P.L.3-1990, SEC.85; P.L.14-1992, SEC.5.*

## Part 2. Scope and Jurisdiction

### 24-4.5-1-201 Territorial application

Sec. 201. (1) Except as otherwise provided in this section, this article applies to sales, leases, and loans made in this state and to modifications, including refinancings, consolidations and deferrals, made in this state, of sales, leases, and loans, wherever made. For purposes of this article:

- (a) a sale or modification of a sale agreement is made in this state if the buyer's agreement or offer to purchase or to modify is received by the seller or a person acting on behalf of the seller in this state;
- (b) a lease or modification of a lease agreement is made in this state if the lessee's agreement or offer to lease or to modify is received by the lessor or a person acting in behalf of the lessor in this state; and
- (c) a loan or modification of a loan agreement is made in this state if a writing signed by the debtor and evidencing the debt is received by the lender or a person acting on behalf of the lender in this state.

(2) With respect to sales made pursuant to a revolving charge account (IC 24-4.5-2-108), this article applies if the buyer's communication or indications of his intention to establish the account is received by the seller in this state. If no communication or indication of intention is given by the buyer before the first sale, this article applies if the seller's communication notifying the buyer of the privilege of using the account is mailed or personally delivered in this state.

(3) With respect to loans made pursuant to a lender credit card or similar arrangement, this article applies if the debtor's communication or indication of his intention to establish the arrangement with the lender is received by the lender in this state. If no communication or indication of intention is given by the debtor before the first loan, this article applies if the lender's communication notifying the debtor of the privilege of using the arrangement is mailed or personally delivered in this state.

(4) IC 24-4.5-5-101 through IC 24-4.5-5-108 apply to actions or other proceedings brought in this state to enforce rights arising from consumer credit sales, consumer leases, or consumer loans, or extortionate extensions of credit, wherever made.

(5) If a consumer credit sale, consumer lease, or consumer loan, or modification thereof, is made in another state to a person who is a resident of this state when the sale, lease, loan, or modification is made, the following provisions apply as though the transaction occurred in this state:

- (a) a seller, lessor, lender, or assignee of his rights, may not collect charges through actions or other proceedings in excess of those permitted by IC 24-4.5-2 or by IC 24-4.5-3; and
- (b) a seller, lessor, lender, or assignee of his rights, may not enforce rights against the buyer, lessee, or debtor, with respect to the provisions of agreements which violate the provisions on limitations on agreements and practices of IC 24-4.5-2 or of IC 24-4.5-3.

(6) Except as provided in subsection (4), a sale, lease, loan, or modification thereof, made in another state to a person who was not a resident of this state when the sale, lease, loan, or modification was made is valid and enforceable in this state according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction.

(7) For the purposes of this article, the residence of a buyer, lessee, or debtor is the address given by him as his residence in any writing signed by him in connection with a credit transaction. Until he notifies the creditor of a new or different address, the given address is presumed to be unchanged.

(7.5) With respect to a consumer credit sale, consumer lease, or consumer loan, or modification thereof, to which this article does not otherwise apply by reason of subsections (1) through (3), if pursuant to a solicitation relating to a consumer credit sale, consumer lease, or consumer loan, a person who is a resident of this state sends a signed writing evidencing the obligation or offer of the person to a creditor in another state and receives the goods or service purchased, the goods leased, or the cash proceeds of the loan in this state:

- (a) a seller, lessor, lender or assignee of his rights may not contract for or receive charges in excess of those permitted by IC 24-4.5-2 or by IC 24-4.5-3;.
- (b) the provisions of IC 24-4.5-2-301 and IC 24-4.5-3-301 shall apply as though the sale, lease, or loan was made in this state; and
- (c) the provisions of IC 24-4.5-6-101 through IC 24-4.5-6-117 shall apply as though the sale, lease, or loan was

made in this state.

(7.6) For the purpose of this section, a solicitation relating to a consumer credit sale, consumer lease, or consumer loan includes:

- (a) with respect to sales and leases, an offer by a catalog, pamphlet, flier, letter, or similar written material to sell or lease goods or to sell services if the terms for the extension of credit are contained therein and regardless of whether or not the instrument of solicitation is sent or delivered at the request of the buyer or lessee;
- (b) with respect to loans, an offer by pamphlet, flier, letter, or similar written material to make loans if the terms for the extension of credit are contained therein and regardless of whether or not the instrument of solicitation is sent or delivered at the request of the debtor; and
- (c) with respect to sales, leases, and loans, an offer by telephone to extend credit if initiated by the seller, lessor, or lender.

(8) Notwithstanding other provisions of this section:

- (a) except as provided in subsection (4), this article does not apply if the buyer, lessee, or debtor is not a resident of this state at the time of a credit transaction and the parties then agree that the law of his residence applies; and
- (b) this article applies if the buyer, lessee, or debtor is a resident of this state at the time of a credit transaction and the parties then agree that the law of this state applies.

(9) Except as provided in subsection (8), the following agreements by a buyer, lessee, or debtor are invalid with respect to consumer credit sales, consumer leases, consumer loans, or modifications thereof, to which this article applies:

- (a) that the law of another state shall apply;
- (b) that the buyer, lessee, or debtor consents to the jurisdiction of another state; and
- (c) that fixes venue.

(10) The following provisions of this article specify the applicable law governing certain cases:

- (a) applicability (IC 24-4.5-6-102) of the provisions on powers and functions of the department; and
- (b) applicability (IC 24-4.5-6-201) of the provisions on notification and fees.

*(Formerly: Acts 1971, P.L.366, SEC.2.) As amended by Acts 1979, P.L.236, SEC.1; P.L.152-1986, SEC.59; P.L.252-1987, SEC.5; P.L.14-1992, SEC.6; P.L.122-1994, SEC.4.*

## **24-4.5-1-202 Exclusions**

Sec. 202. This article does not apply to the following:

- (1) Extensions of credit to government or governmental agencies or instrumentalities.
- (2) The sale of insurance by an insurer, except as otherwise provided in the chapter on insurance (IC 24-4.5-4).
- (3) Transactions under public utility, municipal utility, or common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment.
- (4) The rates and charges and the disclosure of rates and charges of a licensed pawnbroker established in accordance with a statute or ordinance concerning these matters.
- (5) A sale of goods, services, or an interest in land in which the goods, services, or interest in land are purchased primarily for a purpose other than a personal, family, or household purpose.
- (6) A loan in which the debt is incurred primarily for a purpose other than a personal, family, or household purpose.
- (7) An extension of credit primarily for a business, a commercial, or an agricultural purpose.

(8) An installment agreement for the purchase of home fuels in which a finance charge is not imposed.

(9) Loans made, insured, or guaranteed under a program authorized by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).

(10) Transactions in securities or commodities accounts in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.

*(Formerly: Acts 1971, P.L.366, SEC.2.) As amended by Acts 1981, P.L.217, SEC.1; Acts 1982, P.L.149, SEC.1; P.L.247-1983, SEC.1; P.L.14-1992, SEC.7; P.L.176-1996, Sec2.*

### **24-4.5-1-203 Jurisdiction and service of process**

Sec. 203. Jurisdiction—Any civil court of this State may exercise jurisdiction over any creditor with respect to any conduct in this State governed by this Article or with respect to any claim arising from a transaction subject to this Article. In addition to any other method provided by rule or by statute, personal jurisdiction over a creditor may be acquired in a civil action or proceeding instituted in any civil court by the service of process. *(Formerly: Acts 1971, P.L.366, SEC.2.) As amended by P.L.14-1992, SEC.8; P.L.122-1994 SEC.5.*



## Part 3. Definitions

### 24-4.5-1-301 General definitions

Sec. 301. General Definitions—In addition to definitions appearing in subsequent Chapters in this Article.

(1) **“Agreement”** means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance.

(2) **“Agricultural purpose”** means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products; “Agricultural products” includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(3) **“Average daily balance”** means the sum of each of the daily balances in a billing cycle divided by the number of days in the billing cycle, and if the billing cycle is a month, the creditor may elect to treat the number of days in each billing cycle as thirty (30).

(4) **“Closing costs”** with respect to a debt secured by an interest in land includes:

- (a) fees or premiums for title examination, title insurance, or similar purposes including surveys;
- (b) fees for preparation of a deed, settlement statement, or other documents;
- (c) escrows for future payments of taxes and insurance;
- (d) fees for notarizing deeds and other documents;
- (e) appraisal fees; and
- (f) credit reports.

(5) **“Conspicuous”**: A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it.

(6) **“Consumer credit”** means credit offered or extended to a consumer primarily for a personal, family, or household purpose.

(7) **“Credit”** means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(8) **“Creditor”** means a person:

- (a) who regularly engages in the extension of consumer credit that is subject to a credit service charge or loan finance charge, as applicable, or is payable in installments; and
- (b) to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is not a note or contract.

(9) **“Earnings”** means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments under a pension or retirement program.

(10) **“Lender credit card or similar arrangement”** means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using a credit card, letter of credit, or other credit confirmation or identification in transactions out of which debt arises:

- (a) by the lender’s honoring a draft or similar order for the payment of money drawn or accepted by the debtor;

(b) by the lender's payment or agreement to pay the debtor's obligations; or

(c) by the lender's purchase from the obligee of the debtor's obligations.

(11) **"Official fees"** means:

(a) fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit sale, consumer lease, or consumer loan; or

(b) premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease, or loan, if the premium does not exceed the fees and charges described in paragraph (a) which would otherwise be payable.

(12) **"Organization"** means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(13) **"Payable in installments"** means that payment is required or permitted by written agreement to be made in more than four (4) installments not including a down payment.

(14) **"Person"** includes a natural person or an individual, and an organization.

(15) **"Person related to" with respect to an individual** means:

(a) the spouse of the individual;

(b) a brother, brother-in-law, sister, sister-in-law of the individual;

(c) an ancestor or lineal descendants of the individual or the individual's spouse and;

(d) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

**"Person related to" with respect to an organization** means:

(a) a person directly or indirectly controlling, controlled by or under common control with the organization;

(b) an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization;

(c) the spouse of a person related to the organization; and

(d) a relative by blood or marriage of a person related to the organization who shares the same home with him.

(16) **"Presumed" or "presumption"** means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its non-existence.

(17) **"Mortgage transaction"** means a transaction in which a first mortgage or a land contract which constitutes a first lien is created or retained against land.

(18) **"Regularly engaged"** means a person who extends consumer credit more than:

(a) twenty-five (25) times; or

(b) five (5) times for transactions secured by a dwelling;

in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year.

(19) **"Seller credit card"** means an arrangement which gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification for the purpose of purchasing or leasing goods or services from that person, a person related to that person, or from that person and any other person. The term includes a card that is issued by a person, that is in the name of the seller, and that can be used by the buyer or lessee only for purchases or leases at locations of the named seller.

(20) **"Supervised financial organization"** means a person, other than an insurance company or other

organization primarily engaged in an insurance business:

- (a) organized, chartered, or holding an authorization certificate under the laws of a State or of the United States which authorizes the person to make loans and to receive deposits, including a savings, share, certificate or deposit account; and
- (b) subject to supervision by an official or agency of a State or of the United States.

(21) **“Mortgage servicer”** means the last person to whom a mortgagor or the mortgagor’s successor in interest has been instructed by a mortgagee to send payments on a loan secured by a mortgage.

*(Formerly: Acts 1971, P.L.366, SEC.2.) As amended by Acts 1981, P.L.218, SEC.1; P.L.14-1992, SEC.9; P.L.122-1994 SEC.6; P.L.45-1995, SEC.3; P.L.176-1996, SEC.3; P.L. 23-2000, SEC.2.*

### 24-4.5-1-302 Federal Consumer Credit Protection Act

Sec. 302. Federal Consumer Credit Protection Act—In this Article “Federal Consumer Credit Protection Act” means the Consumer Credit Protection Act (Public Law 90-321; 82 Stat. 146), as amended, and includes both the Truth in Lending Simplification and Reform Act amendments (Public Law 96-221, Title VI, 94 Stat. 168) and any regulations issued pursuant to those laws. However, the department may otherwise define this term by rule issued in accordance with IC 24-4.5-6-107.

*(Formerly: Acts 1971, P.L.366, SEC.2.) As amended by Acts 1982, P.L.149, SEC.2; P.L.14-1992, SEC.10.*

### 24-4.5-1-303 Index of definitions in article

**Sec. 303.** Index of Definitions in Article—Definitions in this Article and the sections in which they appear are:

“Agreement” .....	Section 1-301(1)
“Agricultural purpose” .....	Section 1-301(2)
“Amount financed” .....	Section 2-111
“Average daily balance” .....	Section 1-301(3)
“Cash price” .....	Section 2-110
“Civil court” .....	Section 6-117
“Closing costs” .....	Section 1-301(4)
“Conspicuous” .....	Section 1-301(5)
“Consumer credit” .....	Section 1-301(6)
“Consumer Credit insurance” .....	Section 4-103
“Consumer Credit sale” .....	Section 2-104
“Consumer lease” .....	Section 2-106
“Consumer loan” .....	Section 3-104
“Consumer related loan” .....	Section 3-602
“Consumer related sale” .....	Section 2-602
“Credit” .....	Section 1-301(7)
“Creditor” .....	Section 1-301(8)
“Credit Insurance Act” .....	Section 4-102(3)
“Credit service charge” .....	Section 2-109
“Department” .....	Section 6-103
“Director” .....	Section 6-103.5
“Earnings” .....	Section 1-301(9)
“Federal Consumer Credit Protection Act” .....	Section 1-302
“Goods” .....	Section 2-105(1)
“Home solicitation sale” .....	Section 2-501
“Lender” .....	Section 3-107(1)
“Lender credit card or similar arrangement” .....	Section 1-301(10)
“Loan” .....	Section 3-106
“Loan finance charge” .....	Section 3-109
“Loan Primarily Secured by an Interest in Land” .....	Section 3-105
“Merchandise certificate” .....	Section 2-105 (2)
“Mortgage servicer” .....	Section 1-301(21)
“Mortgage transaction” .....	Section 1-301(17)
“Official fees” .....	Section 1-301(11)
“Organization” .....	Section 1-301(12)
“Payable in installments” .....	Section 1-301(13)

“Person” .....	Section 1-301(14)
“Person related to” .....	Section 1-301(15)
“Precomputed” (loan) .....	Section 3-107 (2)
“Precomputed” (sale) .....	Section 2-105 (7)
“Presumed” or “presumption” .....	Section 1-301(16)
“Principal” .....	Section 3-107 (3)
“Regularly engaged” .....	Section 1-301(18)
“Revolving charge account” .....	Section 2-108
“Revolving loan account” .....	Section 3-108
“Sale of goods” .....	Section 2-105 (4)
“Sale of an interest in land” .....	Section 2-105 (6)
“Sale of services” .....	Section 2-105 (5)
“Seller” .....	Section 2-107
“Seller credit card” .....	Section 1-301(19)
“Services” .....	Section 2-105 (3)
“Supervised financial organization” .....	Section 1-301(20)
“Supervised lender” .....	Section 3-501(2)
“Supervised loan” .....	Section 3-501 (1)

*(Formerly: Acts 1971, P.L.366, SEC.2.) As amended by Acts 1981, P.L.218, SEC.2; P.L.14-1992, SEC.11; P.L.122-1994, SEC.7; P.L.80-1998, SEC.3.*

Hold for future use.

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## Part 1. General Provisions

### 24-4.5-2-101 Short title

Sec. 101. Short Title—This Chapter shall be known and may be cited as Uniform Consumer Credit Code—Credit Sales. (*Formerly: Acts 1971, P.L.366, SEC.3*).

### 24-4.5-2-102 Scope

Sec. 102. This Chapter applies to consumer credit sales, including home solicitation sales, and consumer leases; in addition, IC 24-4.5-2-601 through IC 24-4.5-2-605 apply to consumer related sales. (*Formerly: Acts 1971, P.L.366, SEC.3*). As amended by P.L.152-1986, SEC.60.

### 24-4.5-2-103 Definitions in chapter

Sec. 103. Definitions in Chapter—The following definitions apply to this Article and appear in this Chapter as follows:

“Amount financed” .....	Section 2-111
“Annual percentage rate” .....	Section 2-304(2)
“Cash price” .....	Section 2-110
“Consumer credit sale” .....	Section 2-104
“Consumer lease” .....	Section 2-106
“Consumer related sale” .....	Section 2-602
“Corresponding nominal annual percentage rate” .....	Section 2-304(3)
“Credit service charge” .....	Section 2-109
“Goods”. . . ..	Section 2-105(1)
“Home solicitation sale” .....	Section 2-501
“Merchandise certificate” .....	Section 2-105(2)
“Precomputed” .....	Section 2-105(7)
“Revolving charge account” .....	Section 2-108
“Sale of goods” .....	Section 2-105(4)
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“Sale of services” .....	Section 2-105(5)
“Seller” .....	Section 2-107
“Services” .....	Section 2-105(3)

(*Formerly: Acts 1971, P.L.366, SEC.3*).

### 24-4.5-2-104 Definition; “consumer credit sale”

Sec. 104. (1) Except as provided in subsection (2), “consumer credit sale” is a sale of goods, services, or an interest in land in which:

- (a) credit is granted by a person who regularly engages as a seller in credit transactions of the same kind;
- (b) the buyer is a person other than an organization;
- (c) the goods, services, or interest in land are purchased primarily for a personal, family, or household purpose;
- (d) either the debt is payable in installments or a credit service charge is made; and
- (e) with respect to a sale of goods or services, either the amount financed does not exceed fifty thousand dollars (\$50,000) or the debt is secured by personal property used or expected to be used as the principal dwelling of the buyer.



(2) Unless the sale is made subject to this article by agreement (IC 24-4.5-2-601), “consumer credit sale” does not include:

- (a) a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement; or
- (b) except as provided with respect to disclosure (IC 24-4.5-2-301), debtors’ remedies (IC 24-4.5-5-201) providing payoff amounts (IC 24-4.5-2-209), and powers and functions of the department (IC 24-4.5-6-101), a sale of an interest in land which is a mortgage transaction (as defined in IC 24-4.5-1-301(17)).

*(Formerly: Acts 1971, P.L.366, SEC.3.) As amended by Acts 1981, P.L.218, SEC.3; P.L.247-1983, SEC.2; P.L.14-1992, SEC.12; P.L.122-1994, SEC.8; P.L.172-1997, SEC.2; P.L. 23-2000, SEC.3.*

#### **24-4.5-2-105 Definitions; “goods”; “merchandise certificate”; “sale of goods”; “sale of services”; “sale of an interest in land”; “precomputed”**

Sec. 105. Definitions: “Goods”; “Merchandise Certificate”; “Sale of Goods”; “Sale of Services”; “Sale of an Interest in Land”; “Precomputed”.

(1) **“Goods”** includes goods not in existence at the time the transaction is entered into and merchandise certificates, but excludes money, chattel paper, documents of title, and instruments.

(2) **“Merchandise certificate”** means a writing issued by a seller not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services.

(3) **“Services”** includes

- (a) work, labor, and other personal services,
- (b) privileges with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like, and
- (c) insurance provided by a person other than the insurer.

(4) **“Sale of goods”** includes any agreement in the form of bailment or lease of goods if the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with his obligations under the agreement.

(5) **“Sale of services”** means furnishing or agreeing to furnish services and includes making arrangements to have services furnished by another.

(6) **“Sale of an interest in land”** includes a lease in which the lessee has an option to purchase the interest and all or a substantial part of the rental or other payments previously made by him are applied to the purchase price.

(7) A sale, refinancing, or consolidation is **“precomputed”** if the debt is expressed as a sum comprising the amount financed and the amount of the credit service charge computed in advance. *(Formerly: Acts 1971, P.L.366, SEC.3).*

#### **24-4.5-2-106 Definition; “consumer lease”**

Sec. 106. (1) **“Consumer lease”** means a lease of goods:

- (a) which a lessor regularly engaged in the business of making leases to a person, other than an organization, who

under takes the lease primarily for a personal, family, or household purpose;

(b) in which the amount payable under the lease does not exceed fifty thousand dollars (\$50,000); and

(c) which is for a term exceeding four (4) months.

(2) **“Consumer lease” does not include** a lease made pursuant to a lender credit card or similar arrangement. *(Formerly: Acts 1971, P.L.366, SEC.3). As amended by P.L.247-1983, SEC.3; P.L.122-1994, SEC.9.*

#### **24-4.5-2-107 Definition; “Seller”**

Sec. 107. Definition; **“Seller”** —Except as otherwise provided, “seller” includes an assignee of the seller’s right to payment but use of the term does not in itself impose on an assignee any obligation of the seller with respect to events occurring before the assignment. *(Formerly: Acts 1971, P.L.366, SEC.3).*

#### **24-4.5-2-108 Definition; “revolving charge account”**

Sec. 108. Definition; **“Revolving Charge Account”** — “Revolving charge account” means an arrangement between a seller and a buyer pursuant to which

(1) the seller may permit the buyer to purchase goods or services on credit either from the seller or pursuant to a seller credit card,

(2) the unpaid balances of amounts financed arising from purchases and the credit service and other appropriate charges are debited to an account,

(3) a credit service charge if made is not precomputed but is computed on the outstanding unpaid balances of the buyer’s account from time to time, and

(4) the buyer has the privilege of paying the balances in installments. *(Formerly: Acts 1971, P.L.366, SEC.3).*

#### **24-4.5-2-109 Definition; “credit service charge”**

Sec. 109. **“Credit service charge”** means the sum of:

(1) all charges payable directly or indirectly by the buyer and imposed directly or indirectly by the seller as an incident to the extension of credit, including any of the following types of charges which are applicable: time price differential, service, carrying or other charge, however denominated, premium or other charge for any guarantee or insurance protecting the seller against the buyer’s default or other credit loss; and

(2) charges incurred for investigating the collateral or credit-worthiness of the buyer.

The term does not include charges as a result of default, additional charges (IC 24-4.5-2-202), delinquency charges (IC 24-4.5-2-203.5), or deferral charges (IC 24-4.5-2-204). The term does not include charges paid or payable to a third party that are not required by the seller as a condition or incident to the extension of credit except for borrower paid mortgage broker fees, including fees paid directly to the broker or the seller (for delivery to the broker), whether the fees are paid in cash or financed. However, borrower paid mortgage broker fees do not include fees paid to a mortgage broker by a creditor, including yield spread premiums and service release fees. *(Formerly: Acts 1971, P.L.366, SEC.3.) As amended by P.L.247-1983, SEC.4; P.L.14-1992, SEC.13; P.L.2-1995, SEC.90; P.L.172-1997, SEC.3.*

#### **24-4.5-2-110 Definition; “cash price”**

Sec. 110. Definition: **“Cash Price”**—Except as the Department may prescribe by rule, the “cash price” of goods, services, or an interest in land means the price at which the goods, services, or interest in land are offered for sale by the seller to cash buyers in the ordinary course of business, and may include

- (1) applicable sales, use, and excise and documentary fees,
- (2) the cash price of accessories or related services such as delivery, installation, servicing, repairs, alterations service contracts, and improvements, and
- (3) amounts actually paid or to be paid by the seller for registration, certificate of title, or license fees. The cash price stated by the seller to the buyer pursuant to the provisions on disclosure (Part 3) of this Chapter is presumed to be the cash price. *(Formerly: Acts 1971, P.L.366, SEC.3). As amended by P.L.14-1992, SEC.14; P.L.122-1994, SEC.10.*

#### **24-4.5-2-111 Definition; “amount financed”**

Sec. 111. Definition: **“Amount Financed”** — “Amount financed” means the total of the following to the extent that payment is deferred:

- (1) the cash price of the goods, services, or interest in land less the amount of down payment whether made in cash or in property;
- (2) the amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in or a lien on property traded in; and
- (3) if not included in the cash price:
  - (a) any applicable sales, use, excise or documentary fees;
  - (b) amounts actually paid or to be paid by the seller for registration, certificate of title, or license fees; and
  - (c) additional charges permitted by this Chapter (IC 24-4.5-2-202).

*(Formerly: Acts 1971, P.L.366, SEC.3). As amended by P.L.122-1994, SEC.11.*

## Part 2. Maximum Charges

### 24-4.5-2-201 Credit service for consumer credit sales other than revolving charge accounts

Sec. 201. Credit Service Charge for Consumer Credit Sales other than Revolving Charge Accounts— (1) With respect to a consumer credit sale, other than a sale pursuant to a revolving charge account, a seller may contract for and receive a credit service charge not exceeding that permitted by this section.

(2) The credit service charge, calculated according to the actuarial method may not exceed the equivalent of the greater of either of the following:

(a) the total of:

(i) thirty-six percent (36%) per year on that part of the unpaid balances of the amount financed which is three hundred dollars (\$300) or less;

(ii) twenty-one percent (21%) per year on that part of the unpaid balances of the amount financed which is more than three hundred dollars (\$300) but does not exceed one thousand dollars (\$1,000); and

(iii) fifteen percent (15%) per year on that part of the unpaid balances of the amount financed which is more than one thousand dollars (\$1,000); or

(b) twenty-one percent (21%) per year on the unpaid balances of the amount financed.

(3) This section does not limit or restrict the manner of contracting for the credit service charge, whether by way of add-on, discount, or otherwise, so long as the rate of the credit service charge does not exceed that permitted by this section. If the sale is precomputed,

(a) the credit service charge may be calculated on the assumption that all scheduled payments will be made when due, and

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (IC 24-4.5-2-210).

(4) For the purposes of this section, the term of a sale agreement commences with the date the credit is granted or, if goods are delivered or services performed more than thirty (30) days after that date, with the date of commencement of delivery or performance except as set forth below:

(a) Delays attributable to the consumer. Where the customer requests delivery after the thirty (30) day period or where delivery occurs after the thirty (30) day period for a reason attributable to the customer (including but not limited to failure to close on a residence or failure to obtain lease approval), the term of the sale agreement shall commence with the date credit is granted.

(b) Partial Deliveries. Where any portion of the order has been delivered within the thirty (30) day period, the term of the sale agreement shall commence with the date credit is granted.

Differences in the lengths of months are disregarded and a day may be counted as one-thirtieth (1/30) of a month. Subject to classifications and differentiations the seller may reasonably establish, a part of a month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(5) Subject to classifications and differentiations the seller may reasonably establish, he may make the same credit service charge on all amounts financed within a specified range. A credit service charge so made does not violate subsection (2) if:

(a) when applied to the median amount within each range, it does not exceed the maximum permitted by subsection (2), and

(b) when applied to the lowest amount within each range, it does not produce a rate of credit service charge exceeding the rate calculated according to paragraph (a) by more than eight percent (8%) of the rate calculated according to paragraph (a).

(6) Notwithstanding subsection (2), the seller may contract for and receive a minimum credit service charge of not more than thirty dollars (\$30).

(7) The amounts of three hundred dollars (\$300) and one thousand dollars (\$1,000) in subsection (2) are subject to change pursuant to the provisions on adjustment of dollar amounts (IC 24-4.5-1-106).

(8) The amount of thirty dollars (\$30) in subsection (6) is subject to change under the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the Reference Base Index to be used under this subsection is the Index for October 1992. *(Formerly: Acts 1971, P.L.366, SEC.3.) As amended by Acts 1981, P.L.219, SEC.1; P.L.14-1992, SEC.15; P.L.80-1998, SEC.4.*

### **24-4.5-2-202 Additional charges**

Sec. 202. (1) In addition to the credit service charge permitted by IC 24-4.5-2-201 through IC 24-4.5-2-210, a seller may contract for and receive any of the following additional charges in connection with a consumer credit sale:

(a) Official fees and taxes.

(b) Charges for insurance as described in subsection (2).

(c) Notwithstanding provisions of the Federal Consumer Credit Protection Act concerning disclosure, charges for other benefits, including insurance, conferred on the buyer, if the benefits are of value to him and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are excluded as permissible additional charges from the credit service charge. With respect to any additional charge not specifically provided for in this section, to be a permitted charge under this subsection the seller must submit a written explanation of the charge to the department indicating how the charge would be assessed and the value or benefit to the buyer. Supporting documents may be required by the department. The department shall determine whether the charge would be of benefit to the buyer and is reasonable in relation to the benefits.

(d) A charge not to exceed twenty dollars (\$20) for each return by a bank or other depository institution of a dishonored check, negotiable order of withdrawal, or share draft issued by the debtor.

(e) Annual or periodic participation fees assessed in connection with a revolving charge account.

(2) An additional charge may be made for insurance written in connection with the sale, other than insurance protecting the seller against the buyer's default or other credit loss:

(a) with respect to insurance against loss of or damage to property, or against liability, if the seller furnishes a clear and specific statement in writing to the buyer, setting forth the cost of the insurance if obtained from or through the seller, and stating that the buyer may choose the person, subject to the seller's reasonable approval, through whom the insurance is to be obtained; and

(b) with respect to consumer credit insurance providing life, accident, unemployment or other loss of income, or health coverage, if the insurance coverage is not a factor in the approval by the seller of the extension of credit and is clearly disclosed in writing to the buyer, and if, in order to obtain the insurance in connection with the extension of credit, the buyer gives specific affirmative, written indication of the desire to do so after written disclosure of the cost thereof.

(3) With respect to a debt secured by an interest in land, the following closing costs, if the costs are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this article:

(a) fees for title examination, abstract of title, title insurance, property surveys, or similar purposes;

- (b) fees for preparing deeds, mortgages, and reconveyance, settlement, and similar documents;
- (c) notary and credit report fees;
- (d) amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the loan finance charge; and
- (e) appraisal fees.

*(Formerly: Acts 1971, P.L.366, SEC.3.) As amended by P.L.247-1983, SEC.5; P.L.181-1991, SEC.1; P.L.14-1992, SEC.16; P.L.122-1994, SEC.12; P.L.45-1995, SEC.4; P.L.80-1998, SEC.5.*

#### **24-4.5-2-203 Delinquency charges** *(Repealed by P.L.122-1994, SEC.122.)*

#### **24-4.5-2-203.5 Delinquency charges**

**Sec. 203.5.** Delinquency Charges— (1) With respect to a consumer credit sale, refinancing, or consolidation, the parties may contract for a delinquency charge of not more than five dollars (\$5) on any installment or minimum payment due not paid in full within ten (10) days after its scheduled due date.

(2) A delinquency charge under this section may be collected only once on an installment however long it remains in default. A delinquency charge on consumer credit sales made under a revolving charge account may be applied each month that the payment is less than the minimum required payment. A delinquency charge may be collected any time after it accrues. No delinquency charge may be collected if the installment has been deferred and a deferral charge (IC 23-4.5-2-204) has been paid or incurred.

(3) A delinquency charge may not be collected on an installment or payment due that is paid in full within ten (10) days after its scheduled due date even though an earlier maturing installment, minimum payment, or a delinquency charge on:

- (a) an earlier installment; or
- (b) payment due;

may not have been paid in full. For purposes of this subsection, payments are applied first to current installments or payments due and then to delinquent installments or payments due.

(4) If two (2) installments or parts of two (2) installments of a precomputed consumer credit sale are in default for ten (10) days or more, the creditor may elect to convert the consumer credit sale from a precomputed consumer credit sale to a consumer credit sale in which the credit service charge is based on unpaid balances. A creditor that makes this election shall make a rebate under the provisions on rebates upon prepayment under IC 24-4.5-2-210 as of the maturity date of the first delinquent installment, and thereafter may make a credit service charge as authorized by the provisions on credit service charges for consumer credit sales under IC 24-4.5-2-201. The amount of the rebate shall not be reduced by the amount of any permitted minimum charge under IC 24-4.5-2-210. Any deferral charges made on installments due at or after the maturity date of the first delinquent installment shall be rebated, and no further deferral charges shall be made.

(5) The amount of five dollars (\$5) in subsection (1) is subject to change under the section on adjustment of dollar amounts (IC 24-4.5-1-106).

(6) If the parties provide by contract for a delinquency charge that is subject to change, the seller shall disclose that the amount of the delinquency charge is subject to change as provided in IC 24-4.5-1-106. *As added by P.L.247-1983, SEC.6. Amended by P.L.181-1991, SEC.2; P.L.115-1992, SEC.1; P.L.122-1994, SEC.13; P.L.45-1995, SEC.5.*

**24-4.5-2-204 Deferral charges**

Sec. 204. Deferral Charges— (1) With respect to a precomputed consumer credit sale, refinancing, or consolidation, the parties before or after default may agree in writing to a deferral of all or part of one or more unpaid installments, and the seller may make and collect a charge not exceeding the rate previously stated to the buyer pursuant to the provisions on disclosure (Part 3) applied to the amount or amounts deferred for the period of deferral calculated without regard to differences in lengths of months, but proportionately for a part of a month, counting each day as one-thirtieth (1/30) of a month. A deferral charge may be collected at the time it is assessed or at any time thereafter.

(2) The seller, in addition to the deferral charge, may make appropriate additional charges (24-4.5-2-202), and the amount of these charges which is not paid in cash may be added to the amount deferred for the purpose of calculating the deferral charge.

(3) The parties may agree in writing at the time of a precomputed consumer credit sale, refinancing, or consolidation that if an installment is not paid within ten (10) days after its due date, the seller may unilaterally grant a deferral and make charges as provided in this section. No deferral charge may be made for a period after the date that the seller elects to accelerate the maturity of the agreement.

(4) A delinquency charge made by the seller on an installment may not be retained if a deferral charge is made pursuant to this section with respect to the period of delinquency. (*Formerly: Acts 1971, P.L.366, SEC.3*).

**24-4.5-2-205 Credit service charge on refinancing**

Sec. 205. Credit Service Charge on Refinancing—With respect to a consumer credit sale, refinancing, or consolidation, the seller may by agreement with the buyer refinance the unpaid balance and may contract for and receive a credit service charge based on the amount financed resulting from the refinancing at a rate not exceeding that permitted by the provisions on credit service charge for consumer credit sales (IC 24-4.5-2-201). For the purpose of determining the credit service charge permitted, the amount financed resulting from the refinancing comprises the following:

(1) If the transaction was not precomputed, the total of the unpaid balance and accrued charges on the date of refinancing, or, if the transaction was precomputed, the amount which the buyer would have been required to pay upon prepayment pursuant to the provisions on rebate upon prepayment (IC 24-4.5-2-210) on the date of refinancing.

(2) Appropriate additional charges (IC 24-4.5-2-202), payment of which is deferred. (*Formerly: Acts 1971, P.L.366, SEC.3.*) *As amended by P.L.14-1992, SEC.17.*

**24-4.5-2-206 Credit service charge on consolidation**

Sec. 206. Credit Service Charge on Consolidation—If a buyer owes an unpaid balance to a seller with respect to a consumer credit sale, refinancing, or consolidation, and becomes obligated on another consumer credit sale, refinancing, or consolidation with the same seller, the parties may agree to consolidation resulting in a single schedule of payments pursuant to either of the following subsections:

(1) The parties may agree to refinance the unpaid balance with respect to the previous sale pursuant to the provisions on refinancing (24-4.5-2-205) and to consolidate the amount financed resulting from the refinancing by adding it to the amount financed with respect to the subsequent sale. The seller may contract for and receive a credit service charge based on the aggregate amount financed resulting from the consolidation at a rate not exceeding that permitted by the provisions on credit service charge for consumer credit sales (24-4.5-2-201).

(2) The parties may agree to consolidate by adding together the unpaid balances with respect to the two sales. (*Formerly: Acts 1971, P.L.366, SEC.3*)

**24-4.5-2-207 Credit service charge for revolving charge accounts**



Sec. 207. Credit Service Charge for Revolving Charge Accounts— (1) With respect to a consumer credit sale made pursuant to a revolving charge account, the parties to the sale may contract for the payment by the buyer of a credit service charge not exceeding that permitted in this section.

(2) A charge may be made in each billing cycle which is a percentage of an amount no greater than

(a) the average daily balance of the account,

(b) the unpaid balance of the account on the same day of the billing cycle, or

(c) the median amount within a specified range within which the average daily balance of the account or the unpaid balance of the account on the same day of the billing cycle is included. A charge may be made pursuant to this paragraph only if the seller, subject to classification and differentiations he may reasonably establish, makes the same charge on all balances within the specified range and if the percentage when applied to the median amount within the range does not produce a charge exceeding the charge resulting from applying that percentage to the lowest amount within the range by more than eight percent (8%) of the charge on the median amount.

(3) If the billing cycle is monthly, the charge may not exceed one and three fourths percent (1 3/4%) of the amount pursuant to subsection (2). If the billing cycle is not monthly, the maximum charge is that percentage which bears the same relation to the applicable monthly percentage as the number of days in the billing cycle bears to thirty (30). For the purposes of this section, a variation of not more than four (4) days from month to month is “the same day of the billing cycle.”

(4) Notwithstanding subsection (3), if there is an unpaid balance on the date as of which the credit service charge is applied, the seller may contract for and receive a charge not exceeding fifty cents (\$.50), if the billing cycle is monthly or longer, or the pro rata part of fifty cents (\$.50) which bears the same relation to fifty cents (\$.50) as the number of days in the billing cycle bears to thirty (30) if the billing cycle is shorter than monthly. (*Formerly: Acts 1971, P.L.366, SEC.3). As amended by Acts 1981, P.L.219, SEC.2; Acts 1982, P.L.150, SEC.1.*)

#### **24-4.5-2-208 Advances to perform covenants of buyer**

Sec. 208. Advances to Perform Covenants of Buyer— (1) If the agreement with respect to a consumer credit sale, refinancing, or consolidation contains covenants by the buyer to perform certain duties pertaining to insuring or preserving collateral and the seller pursuant to the agreement pays for performance of the duties on behalf of the buyer, the seller may add the amount paid to the debt. Within a reasonable time after advancing any sums, he shall state to the buyer in writing the amount of the sums advanced, any charges with respect to this amount, and any revised payment schedule and, if the duties of the buyer performed by the seller pertain to insurance, a brief description of the insurance paid for by the seller including the type and amount of coverages. No further information need be given.

(2) A credit service charge may be made for sums advanced pursuant to subsection (1) at a rate not exceeding the rate stated to the buyer pursuant to the provisions on disclosure (Part 3) with respect to the sale, refinancing or consolidation, except that with respect to a revolving charge account the amount of the advance may be added to the unpaid balance of the account and the seller may make a credit service charge not exceeding that permitted by the provisions on credit service charge for revolving charge accounts (24-4.5-2-207). (*Formerly: Acts 1971, P.L.366, SEC.3).*)

#### **24-4.5-2-209 Right to prepay**

Sec. 209. Right to Prepay—(1) Subject to the provisions on rebate upon prepayment (24-4.5- 2-210), the buyer may prepay in full the unpaid balance of a consumer credit sale, refinancing, or consolidation at any time without penalty.

(2) At the time of prepayment of a credit sale not subject to the provisions of rebate upon prepayment (IC 24-4.5-2-210), the total credit service charge, including the prepaid credit service charge may not exceed the maximum charge



allowed under this chapter for the period the credit sale was in effect.

(3) The creditor or mortgage servicer shall provide an accurate payoff of the consumer credit sale to the debtor within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's written request for the accurate consumer credit sale payoff amount. A creditor or mortgage servicer who fails to provide the accurate consumer credit sale payoff amount is liable for:

(A) one hundred dollars (\$100) if an accurate consumer credit sale payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's first written request; and

(B) the greater of:

(i) one hundred dollars (\$100); or

(ii) the credit service charge that accrues on the sale from the date the creditor or mortgage servicer receives the first written request until the date on which the accurate consumer credit sale payoff amount is provided;

if an accurate consumer credit sale payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after the creditor or mortgage servicer received the debtor's second written request, and the creditor or mortgage servicer failed to comply with clause (A).

A liability under this subsection is an excess charge under IC 24-4.5-5-202. (*Formerly: Acts 1971, P.L.366, SEC.3). As Amended by P.L.23-2000, SEC.5; P.L.134/63-2001, SEC.2.*)

### 24-4.5-2-210 Rebate upon prepayment

Sec. 210. Rebate upon Prepayment—(1) Except as provided in subsection (2), upon prepayment in full of the unpaid balance of a precomputed consumer credit sale, refinancing, or consolidation, an amount not less than the unearned portion of the credit service charge calculated according to this section shall be rebated to the buyer. If the rebate required is less than one dollar (\$1), no rebate need be made.

(2) Upon prepayment in full of a consumer credit sale, refinancing, or consolidation, other than one pursuant to a revolving charge account, if the credit service charge then earned is less than any permitted minimum credit service charge (IC 24-4.5-2-201(6)) contracted for, whether or not the sale, refinancing, or consolidation is precomputed, the seller may collect or retain the minimum charge, as if earned, not exceeding the credit service charge contracted for.

(3) The unearned portion of the credit service charge is a fraction of the credit service charge of which the numerator is the sum of the periodic balances scheduled to follow the computational period in which prepayment occurs, and the denominator is the sum of all periodic balances under either the sale agreement or, if the balance owing resulted from a refinancing (IC 24-4.5-2-205) or a consolidation (IC 24-4.5-2-206), under the refinancing agreement or consolidation agreement.

(4) In this section

(a) “**periodic balance**” means the amount scheduled to be outstanding on the last day of a computational period before deducting the payment, if any, scheduled to be made on that day;

(b) “**computational period**” means one month if one-half (½) or more of the intervals between scheduled payments under the agreement is one month or more, and otherwise means one week;

(c) the “**interval**” to the due date of the first scheduled installment or the final scheduled payment date is measured from the date of a sale, refinancing, or consolidation, or any later date prescribed for calculating maximum credit service charges (IC 24-4.5-2-201(4)), and includes either the first or last day of the interval; and

(d) if the interval to the due date of the first scheduled installment does not exceed one (1) month by more than

fifteen (15) days when the computational period is one (1) month, or eleven (11) days when the computational period is one (1) week, the interval shall be considered as one computational period.

(5) This subsection applies only if the schedule of payments is not regular.

(a) If the computational period is one (1) month and

(i) if the number of days in the interval to the due date of the first scheduled installment is less than one (1) month by more than five (5) days, or more than one (1) month by more than five (5) but not more than fifteen (15) days, the unearned credit service charge shall be increased by an adjustment for each day by which the interval is less than one (1) month and, at the option of the seller, may be reduced by an adjustment for each day by which the interval is more than one (1) month; the adjustment for each day shall be one-thirtieth (1/30) of that part of the credit service charge earned in the computational period prior to the due date of the first scheduled installment assuming that period to be one (1) month; and

(ii) if the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full month, the additional number of days shall be considered a computational period only if sixteen (16) days or more. This subparagraph applies whether or not subparagraph (i) applies.

(b) Notwithstanding paragraph (a), if the computational period is one (1) month, the number of days in the interval to the due date of the first installment exceeds one (1) month by not more than fifteen (15) days, and the schedule of payments is otherwise regular, the seller, at the seller's option, may exclude the extra days and the charge for the extra days in computing the unearned credit service charge; but if the seller does so and a rebate is required before the due date of the first scheduled installment, the seller shall compute the earned charge for each elapsed day as one-thirtieth (1/30) of the amount the earned charge would have been if the first interval had been one (1) month.

(c) If the computational period is one week and:

(i) if the number of days in the interval to the due date of this first scheduled installment is less than five (5) days or more than nine (9) days but not more than eleven (11) days, the unearned credit service charge shall be increased by an adjustment for each day by which the interval is less than seven (7) days and, at the option of the seller, may be reduced by an adjustment for each day by which the interval is more than seven (7) days; the adjustment for each day shall be one-seventh (1/7) of that part of the credit service charge earned in the computational period prior to the due date of the first scheduled installment assuming that period to be one (1) week; and

(ii) if the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full week, the additional number of days shall be considered a computational period only if five (5) days or more. This subparagraph applies whether or not subparagraph (i) applies.

(6) If a deferral (IC 24-4.5-2-204) has been agreed to, the unearned portion of the credit service charge shall be computed without regard to the deferral. The amount of deferral charge earned at the date of prepayment shall also be calculated. If the deferral charge earned is less than the deferral charge paid, the difference shall be added to the unearned portion of the credit service charge. If any part of a deferral charge has been earned but has not been paid, that part shall be subtracted from the unearned portion of the credit service charge or shall be added to the unpaid balance.

(7) This section does not preclude the collection or retention by the seller of delinquency charges (IC 24-4.5-2-203.5).

(8) If the maturity is accelerated for any reason and judgment is obtained, the buyer is entitled to the same rebate as if payment had been made on the date judgment is entered..

(9) Upon prepayment in full of a consumer credit sale by the proceeds of consumer credit insurance (IC 24-4.5-4-103), the buyer or the buyer's estate shall pay the same credit service charge or receive the same rebate as though the buyer had prepaid the agreement on the date the proceeds of the insurance are paid to the seller, but no later than ten (10) business days after satisfactory proof of loss is furnished to the seller. This subsection applies whether or not the credit sale is precomputed..

(10) Upon prepayment in full of a transaction with a term of more than sixty-one (61) months, the unearned part of the credit service charge shall be computed by applying the disclosed annual percentage rate that would yield the credit service charge originally contracted for to the unpaid balances of the amount financed for the full computational periods following the prepayment, as originally scheduled or as deferred. *(Formerly: Acts 1971, P.L.366, SEC.3.) As amended by P.L.14-1992, SEC.18; P.L.122-1994, SEC.14; P.L.2-1995, SEC.91; P.L.176-1996, SEC.4.*

## Part 3. Disclosure

### 24-4.5-2-301 Applicability; information required

Sec. 301. (1) For purposes of this section, “consumer credit sale” includes the sale of an interest in land which is a mortgage transaction if the sale is otherwise a consumer credit sale (IC 24-4.5-2-104).

(2) The seller shall disclose to the buyer to whom credit is extended with respect to a consumer credit sale, and the lessor shall disclose to the lessee with respect to a consumer lease, the information required by the Federal Consumer Credit Protection Act.

(3) For purposes of subsection (2), disclosures shall not be required on a consumer credit sale if the transaction is exempt from the Federal Consumer Credit Protection Act. *(Formerly: Acts 1971, P.L.366, SEC.3). As amended by Acts 1981, P.L.218, SEC.4; P.L.247-1983, SEC.7; P.L.45-1995, SEC.6. P.L. 247-1983, SEC.26. SECTIONS: 24-4.5-2-302 --24-4.5-2-312 EFFECTIVE JULY 1, 1983.*

**24-4.5-2-302 to 24-4.5-2-312 Repealed** *(Repealed by P.L.247-1982, SEC.26.)*

## Part 4. Limitations on Agreements and Practices

### 24-4.5-2-401 Scope

Sec. 401. Scope—This Part<sup>1</sup> applies to consumer credit sales and consumer leases. (*Formerly: Acts 1971, P.L.366, SEC.3*).

<sup>1</sup>IC 24-4.5-2-401 et seq.

### 24-4.5-2-402 Use of multiple agreements

Sec. 402. Use of Multiple Agreements—A seller may not use multiple agreements with intent to obtain a higher credit service charge than would otherwise be permitted by this Article or to avoid disclosure of an annual percentage rate pursuant to the provisions on disclosure and advertising (Part 3<sup>1</sup>). The excess amount of credit service charge provided for in agreements in violation of this section is an excess charge for the purposes of the provisions on the effect of violations on rights of parties (IC 24-4.5-5-202) and the provisions on civil actions by the department (IC 24-4.5-6-113). (*Formerly: Acts 1971, P.L.366, SEC.3*). *As amended by P.L.14-1992, SEC.19*.

<sup>1</sup>IC 24-4.5-2-301.

**24-4.5-2-403 Certain negotiable instruments prohibited** (*Repealed by P.L.122-1994, SEC.122 and P.L.129-1994, SEC.3*.)

**24-4.5-2-404 When assignee not subject to defenses** (*Repealed by P.L.45-1995, SEC.33*.)

### 24-4.5-2-405 Balloon payments

Sec. 405. (1) With respect to a consumer credit sale, other than one pursuant to a revolving charge account or one on which only credit service charges are payable before the time that the final scheduled payment is due, if any scheduled payment is more than twice as large as the average of earlier scheduled payments, the buyer has the right to refinance the amount of that payment at the time it is due without penalty. The terms of the refinancing shall be no less favorable to the buyer than the terms of the original sale. This section does not apply to the extent that the payment schedule is adjusted to the seasonal or irregular income of the buyer.

(2) For the purposes of this section, “terms of the refinancing” means:

(a) in the case of a fixed-rate consumer credit sale, the individual payment amounts, the charges as a result of default by the buyer, and the rate of the credit service charge; and

(b) in the case of a variable rate consumer credit sale, the method used to determine the individual payment amounts, the charges as a result of default by the buyer, the method used to determine the rate of the credit service charge, the circumstances under which the rate of the credit service charge may increase, and any limitations on the increase in the rate of the credit service charge. (*Formerly: Acts 1971, P.L.366, SEC.3*). *As amended by P.L.247-1983, SEC.10*.

### 24-4.5-2-406 Restriction on liability in consumer lease

Sec. 406. The obligation of a lessee upon expiration of a consumer lease may not exceed three (3) times the average payment allocable to a monthly period under the lease. This limitation does not apply to charges for damages to the leased property or for other default. (*Formerly: Acts 1971, P.L.366, SEC.3*). *As amended by P.L.247-1983, SEC.11; P.L.45-1995, SEC.7*.

**24-4.5-2-407 Security in sales or leases**

Sec. 407. (1) With respect to a consumer credit sale, a seller may take a security interest in the property sold. In addition, a seller may take a security interest in goods upon which services are performed or in which goods sold are installed or to which they are annexed, or in land to which the goods are affixed or which is maintained, repaired or improved as a result of the sale of the goods or services, if in the case of a security interest in land the debt secured is one thousand dollars (\$1,000) or more, or, in the case of a security interest in goods the debt secured is three hundred dollars (\$300) or more. Except as provided with respect to cross-collateral (IC 24-4.5-2-408), a seller may not otherwise take a security interest in property of the buyer to secure the debt arising from a consumer credit sale.

(2) With respect to a consumer lease, a lessor may not take a security interest in property of the lessee to secure the debt arising from the lease.

(3) A security interest taken in violation of this section is void.

(4) The amounts of one thousand dollars (\$1,000) and three hundred dollars (\$300) in subsection (1) are subject to change pursuant to the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). *(Formerly: Acts 1971, P.L.366, SEC.3). As amended by P.L.247-1983, SEC.12.*

**24-4.5-2-408 Cross-collateral**

Sec. 408. Cross-Collateral—(1) In addition to contracting for a security interest pursuant to the provisions on security in sales or leases (24-4.5-2-407), a seller in a consumer credit sale may secure the debt arising from the sale by contracting for a security interest in other property if as a result of a prior sale the seller has an existing security interest in the other property. The seller may also contract for a security interest in the property sold in the subsequent sale as security for the previous debt.

(2) If the seller contracts for a security interest in other property pursuant to this section, the rate of credit service charge thereafter on the aggregate unpaid balances so secured may not exceed that permitted if the balances so secured were consolidated pursuant to the provisions on consolidation involving a refinancing (subsection (1) of 24-4.5-2-206). The seller has a reasonable time after so contracting to make any adjustments required by this section. “Seller” in this section does not include an assignee not related to the original seller. *(Formerly: Acts 1971, P.L.366, SEC.3).*

**24-4.5-2-409 Debt secured by cross-collateral**

Sec. 409. (1) If debts arising from two (2) or more consumer credit sales, other than sales pursuant to a revolving charge account, are secured by cross-collateral (IC 24-4.5-2-408) or consolidated into one (1) debt payable on a single schedule of payments, and the debt is secured by security interest taken with respect to one (1) or more of the sales, payments received by the seller after the taking of the cross-collateral or the consolidation are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been first applied to the payment of the debts arising from the sales first made. To the extent debts are paid according to this section, security interests in items of property terminate as the debt originally incurred with respect to each item is paid.

(2) Payments received by the seller upon a revolving charge account are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of credit service charges in the order of their entry to the account and then to the payment of debts in the order in which the entries to the account showing the debts were made.

(3) If the debts consolidated arose from two (2) or more sales made on the same day, payments received by the seller are deemed, for the purpose of determining the amount of the debts secured by the various security interests, to have been applied first to the payment of the smallest debt. *(Formerly: Acts 1971, P.L.366, SEC.3). As amended by P.L.247-1983, SEC.13.*

**24-4.5-2-410 No assignment of earnings**

Sec. 410. No Assignment of Earnings—A seller or lessor may not take an assignment of earnings of the buyer or lessee for payment or as security for payment of a claim, whether arising out of consumer credit sale, consumer lease or otherwise. An assignment of earnings in violation of this section is unenforceable by the assignees of the earnings and revocable by the buyer or lessee. This section does not prohibit an employee from authorizing deductions from his earnings if the authorization is revocable and is otherwise permitted by law. (*Formerly: Acts 1971, P.L.366, SEC.3*).

**24-4.5-2-411 Referral sales**

Sec. 411. Referral Sales—With respect to a consumer credit sale or consumer lease the seller or lessor may not give or offer to give a rebate or discount or otherwise pay or offer to pay value to the buyer or lessee as an inducement for a sale or lease in consideration of his giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the seller or lessor in making a sale or lease to another person, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease. If a buyer or lessee is induced by a violation of this section to enter into a consumer credit sale or consumer lease, the agreement is unenforceable by the seller or lessor and the buyer or lessee, at his option, may rescind the agreement or retain the goods delivered and the benefit of any services performed, without any obligation to pay for them. (*Formerly: Acts 1971, P.L.366, SEC.3. As amended by Acts 1978 P.L.127, SEC.1.*

**24-4.5-2-412 Notice of assignment**

Sec. 412. Notice of Assignment—The buyer or lessee is authorized to pay the original seller or lessor until the buyer or lessee receives notification of assignment of the rights to payment pursuant to a consumer credit sale or consumer lease and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the buyer or lessee may pay the seller or lessor. (*Formerly: Acts 1971, P.L.366, SEC.3*).

**24-4.5-2-413 Attorney's fees**

Sec. 413. Attorney's Fees—With respect to a consumer credit sale or consumer lease the agreement may provide for the payment by the buyer or lessee of reasonable attorney's fees and after default and referral to an attorney not a salaried employee of the seller, or of the lessor or his assignee. A provision in violation of this section is unenforceable. (*Formerly: Acts 1971, P.L.366, SEC.3*).

**24-4.5-2-414 Limitation on default charges**

Sec. 414. Limitation on Default Charges—Except for reasonable expenses incurred in realizing on a security interest, the agreement with respect to a consumer credit sale may not provide for any charges as a result of default by the buyer other than those authorized by this Article. A provision in violation of this section is unenforceable. (*Formerly: Acts 1971, P.L.366, SEC.3*).

**24-4.5-2-415 Authorization to confess judgment prohibited**

Sec. 415. Authorization to Confess Judgment Prohibited—A buyer or lessee may not authorize any person to confess judgment on a claim arising out of a consumer credit sale or consumer lease. An authorization in violation of this section is void. (*Formerly: Acts 1971, P.L.366, SEC.3*).

**24-4.5-2-416 Change in terms of revolving charge accounts** (*Repealed by P.L.122-1994, SEC.122.*)

## Part 5. Home Solicitation Sales

### 24-4.5-2-501 Definition: “Home Solicitation Sale”

Sec. 501 Definition: **“Home Solicitation Sale”** — “Home solicitation sale” means a consumer credit sale of goods, other than farm equipment, or services in which:

(1) the seller or a person acting for him engages in a personal solicitation of the sale, including a solicitation over the telephone, at a residence of the buyer and the buyer’s agreement or offer to purchase is there given to the seller or a person acting for him; or

(2) the seller or his agent, solicits a sale in a city or town in which the seller does not have a permanent business establishment, through mailings, advertisements, or telephone calls, which require the buyer to meet the seller or his agent at a place other than the seller’s permanent business establishment.

It does not include a sale made pursuant to a preexisting revolving charge account, or a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale. *(Formerly: Acts 1971, P.L.366, SEC.3). As amended by Acts 1979, P.L.237, SEC.1.*

### 24-4.5-2-502 Buyer’s right to cancel

Sec. 502. Buyer’s Right to Cancel—The requirements of 16 CFR 429 must be met in regard to the following provisions concerning home solicitation sales:

- (1) Period within which cancellation may be made by the buyer.
- (2) Notice of cancellation.
- (3) Form of cancellation.
- (4) Form of agreement or offer to purchase.
- (5) Statement of buyer’s rights.
- (6) Restoration of down payment.
- (7) Retention of cancellation fee.
- (8) Duty of buyer.
- (9) Any other relevant requirements in 16 CFR 429.

*(Formerly: Acts 1971, P.L.366, SEC.3.) As amended by P.L.14-1992, SEC.22.*

### 24-4.5-2-503 to 24-4.5-2-505 Repealed *(Repealed by P.L.14-1992, SEC.165.)*



## Part 6. Sales Other Than Consumer Credit Sales

### 24-4.5-2-601 Sale subject to article by agreement of parties

Sec. 601. Sale Subject to Article by Agreement of Parties—The parties to a sale other than a consumer credit sale may agree in a writing signed by the parties that the sale is subject to the provisions of this Article applying to consumer credit sales. If the parties so agree, the sale is a consumer credit sale for the purposes of this Article. (Formerly: Acts 1971, P.L.366, SEC.3).

### 24-4.5-2-602 Definition: “consumer related sale”; rate of credit service Charge

Sec. 602. (1) A “consumer related sale” is a sale of goods, services, or an interest in land which is not subject to the provisions of this article applying to consumer credit sales and in which the amount financed does not exceed fifty thousand dollars (\$50,000) if the buyer is a person other than a organization.

(2) With respect to a consumer related sale not made pursuant to a revolving charge account, the parties may contract for an amount comprising the amount financed and a credit service charge not in excess of twenty-one percent (21%) per year calculated according to the actuarial method on the unpaid balances of the amount financed.

(3) With respect to a consumer related sale made pursuant to a revolving charge account, the parties may contract for a credit service charge not in excess of that permitted by the provisions on credit service charge for revolving charge accounts (IC 24-4.5-2-207). (Formerly: Acts 1971, P.L.366, SEC.3). As amended by Acts 1981, P.L.219, SEC.3; Acts 1982, P.L.149, SEC.3; P.L.5-1988, SEC.130; P.L.122-1994, SEC 15.

### 24-4.5-2-603 Applicability of other provisions to consumer related sales

Sec. 603. Applicability of other Provisions to Consumer Related Sales—Except for the rate of the credit service charge (24-4.5-2-201) and the rights to prepay and to rebate upon prepayment, the provisions of Part 2 of this Chapter apply to a consumer related sale. (Formerly: Acts 1971, P.L.366, SEC.3).

### 24-4.5-2-604 Limitation on default charges in consumer related sales

Sec. 604. Limitation on Default Charges in Consumer Related Sales—(1) The Agreement with respect to a consumer related sale may provide for only the following charges as a result of the buyer’s default:

- (a) reasonable attorney’s fees and reasonable expenses incurred in realizing on a security interest;
- (b) deferral charges not in excess of twenty-one percent (21%) per year of the amount deferred for the period of deferral; and
- (c) other charges that could have been made had the sale been a consumer credit sale.

(2) A provision in violation of this section is unenforceable. (Formerly: Acts 1971, P.L.366, SEC.3). As amended by Acts 1982, P.L.150, SEC.2.

### 24-4.5-2-605 Credit service charge for other sales

Sec. 605. Credit Service Charge for Other Sales—With respect to a sale other than a consumer credit sale or a consumer related sale, the parties may contract for the payment by the buyer of any credit service charge. (Formerly: Acts 1971, P.L.366, SEC.3).

Hold for future use.

## CHAPTER 3. Loans.

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## Part 1. General Provisions

### 24-4.5-3-101 Short title

Sec. 101. Short Title—This Chapter shall be known and may be cited as Uniform Consumer Credit Code - Loans. (Formerly: Acts 1971, P.L.366, SEC.4).

### 24-4.5-3-102 Scope

Sec. 102. This Chapter applies to consumer loans, including regulated and supervised loans; in addition, IC 24-4.5-3-601 through IC 24-4.5-3-605 apply to consumer related loans. (Formerly: Acts 1971, P.L.366, SEC.4). As amended by P.L.152-1986, SEC.62.

### 24-4.5-3-103 Definitions in chapter

Sec. 103. Definitions in Chapter—The following definitions apply to this Article:

“Consumer loan” .....	Section 3-103
“Consumer related loan” .....	Section 3-602(1)
“Lender” .....	Section 3-107(1)
“Loan” .....	Section 3-106
“Loan finance charge” .....	Section 3-109
“Loan Primarily Secured by an Interest in Land” .....	Section 3-105
“Precomputed” .....	Section 3-107(2)
“Principal” .....	Section 3-107(3)
“Revolving loan account” .....	Section 3-108
“Supervised lender” .....	Section 3-501(2)
“Supervised loan” .....	Section 3-501(1)

(Formerly: Acts 1971, P.L.366, SEC.4). As amended by P.L.122-1994, SEC.16.

### 24-4.5-3-104 Definition; “consumer loan”

Sec. 104. Except with respect to a loan primarily secured by an interest in land (IC 24-4.5. Section 3-105), “**consumer loan**” is a loan made by a person regularly engaged in the business of making loans in which:

- (a) the debtor is a person other than an organization;
- (b) the debt is primarily for a personal, family, or household purpose;
- (c) either the debt is payable in installments or a loan finance charge is made; and
- (d) either the principal does not exceed fifty thousand dollars (\$50,000) or the debt is secured by an interest in land or by personal property used or expected to be used as the principal dwelling of the debtor.

(Formerly: Acts 1971, P.L.366, SEC.4). As amended by P.L.247-1983, SEC.14; P.L.122-1994, SEC.17.

### 24-4.5-3-105 Definition; “loan primarily secured by in interest in land”

Sec. 105. Unless the loan is made subject to IC 24-4.5-3 by agreement (IC 24-4.5-3-601), and except with respect to disclosure (IC 24-4.5-3-301), debtor’s remedies (IC 24-4.5-5-201), providing payoff amounts (IC 24-4.5-3-209), and powers and functions of the department (IC 24-4.5-6-101), “consumer loan” does not include a loan primarily

secured by an interest in land which is a mortgage transaction (as defined in IC 24-4.5-1-301(17)). (Formerly: Acts 1971, P.L.366, SEC.4). As amended by Acts 1979, P.L.238, SEC.1; Acts 1981, P.L.218, SEC.5; P.L.152-1986, SEC.63; P.L.14-1992, SEC.23; P.L.176-1996, SEC.5; P.L.23-2000, SEC.4.

### 24-4.5-3-106 Definition; “loan”

Sec. 106. Definition: **“Loan”**—“Loan” includes (1) the creation of debt by the lender’s payment of or agreement to pay money to the debtor or to a third party for the account of the debtor;

(2) the creation of debt by a credit to an account with the lender upon which the debtor is entitled to draw immediately;

(3) the creation of debt pursuant to a lender credit card or similar arrangement; and

(4) the forbearance of debt arising from a loan. (Formerly: Acts 1971, P.L.366, SEC.4).

### 24-4.5-3-107 Definitions; “lender”; “precomputed”; “principal”

Sec. 107. Definitions: **“Lender”**; **“Precomputed”**; **“Principal”**—(1) Except as otherwise provided, **“lender”** includes an assignee of the lender’s right to payment but use of the term does not in itself impose on an assignee any obligation of the lender with respect to events occurring before the assignment.

(2) A loan, refinancing, or consolidation is **“precomputed”** if the debt is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance.

(3) **“principal”** of a loan means the total of

(a) the net amount paid to, receivable by, or paid or payable for the account of the debtor,

(b) the amount of any discount excluded from the loan finance charge (subsection (2) of 24-4.5-3-109), and

(c) to the extent that payment is deferred,

(i) amounts actually paid or to be paid by the lender for registration, certificate of title, or license fees if not included in (a), and

(ii) additional charges permitted by this Chapter (24-4.5-3-202).

(Formerly: Acts 1971, P.L.366, SEC.4).

### 24-4.5-3-108 Definition; “revolving loan account”

Sec. 108. Definition: **“Revolving Loan Account”**—“Revolving loan account” means an arrangement between a lender and a debtor pursuant to which

(1) the lender may permit the debtor to obtain loans from time to time,

(2) the unpaid balances of principal and the loan finance and other appropriate charges are debited to an account,

(3) a loan finance charge if made is not precomputed but is computed on the outstanding unpaid balances of the debtor’s account from time to time, and

(4) the debtor has the privilege of paying the balances in installments. (Formerly: Acts 1971, P.L.366, SEC.4).

**24-4.5-3-109 Definition; “loan finance charge”**

Sec. 109. (1) **“Loan finance charge”** means the sum of:

- (a) all charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to the extension of credit, including any of the following types of charges which are applicable: interest or any amount payable under a point, discount, or other system of charges, however denominated, premium or other charge for any guarantee or insurance protecting the lender against the debtor’s default or other credit loss; and
- (b) charges incurred for investigating the collateral or credit-worthiness of the debtor.

The term does not include charges as a result of default, additional charges (IC 24-4.5-3-202), delinquency charges (IC 24-4.5-3-203.5), or deferral charges (IC 24-4.5-3-204). The term does not include charges paid or payable to a third party that are not required by the lender as a condition or incident to the extension of credit except for borrower paid mortgage broker fees, including fees paid directly to the broker or the seller (for delivery to the broker), whether the fees are paid in cash or financed. However, borrower paid mortgage broker fees do not include fees paid to a mortgage broker by a creditor, including yield spread premiums and service release fees.

(2) If a lender makes a loan to a debtor by purchasing or satisfying obligations of the debtor pursuant to a lender credit card or similar arrangement, and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the loan finance charge. *(Formerly: Acts 1971, P.L.366, SEC.4.) As amended by P.L.247-1983, SEC.15; P.L.14-1992, SEC.24; P.L.172-1997, SEC.4.*

## Part 2. Maximum Charges

### 24-4.5-3-201 Loan finance charge for consumer loans other than supervised loans

Sec. 201. Loan Finance Charge for Consumer Loans other than Supervised Loans— (1) Except as provided in subsections (6) and (8), with respect to a consumer loan other than a supervised loan (IC 24-4.5-3-501), a lender may contract for a loan finance charge, calculated according to the actuarial method, not exceeding twenty-one percent (21%) per year on the unpaid balances of the principal.

(2) This section does not limit or restrict the manner of contracting for the loan finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the loan finance charge does not exceed that permitted by this section. If the loan is precomputed,

(a) the loan finance charge may be calculated on the assumption that all scheduled payments will be made when due, and

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (IC 24-4.5-3-210).

(3) For the purposes of this section, the term of a loan commences with the date the loan is made. Differences in the lengths of months are disregarded and a day may be counted as one-thirtieth ( $1/30$ ) of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and if that procedure is not consistently used to obtain a greater yield than would otherwise be permitted. For purposes of computing average daily balances, the creditor may elect to treat all months as consisting of thirty (30) days.

(4) With respect to a consumer loan made pursuant to a revolving loan account

(a) the loan finance charge shall be deemed not to exceed the maximum annual percentage rate if the loan finance charge contracted for and received does not exceed a charge in each monthly billing cycle which is one and three-fourths percent ( $1\frac{3}{4}\%$ ) of an amount no greater than

(i) the average daily balance of the debt,

(ii) the unpaid balance of the debt on the same day of the billing cycle, or,

(iii) subject to subsection (5), the median amount within a specified range within which the average daily balance or the unpaid balance of the debt, on the same day of the billing cycle, is included; for the purposes of this subparagraph and subparagraph (ii), a variation of not more than four (4) days from month to month is “the same day of the billing cycle”;

(b) if the billing cycle is not monthly, the loan finance charge shall be deemed not to exceed the maximum annual percentage rate if the loan finance charge contracted for and received does not exceed a percentage which bears the same relation to one-twelfth ( $1/12$ ) the maximum annual percentage rate as the number of days in the billing cycle bears to thirty (30); and

(c) notwithstanding subsection (1), if there is an unpaid balance on the date as of which the loan finance charge is applied, the lender may contract for and receive a charge not exceeding fifty cents (\$.50) if the billing cycle is monthly or longer, or the pro rata part of fifty cents (\$.50) which bears the same relation to fifty cents (\$.50) as the number of days in the billing cycle bears to thirty (30) if the billing cycle is shorter than monthly, but no charge may be made pursuant to this paragraph if the lender has made an annual charge for the same period as permitted by the provisions on additional charges (paragraph (c) of subsection (1) of IC 24-4.5-3-202).

(5) Subject to classifications and differentiations the lender may reasonably establish, and make the same loan finance charge on all amounts financed within a specified range. A loan finance charge does not violate subsection (1) if:

(a) when applied to the median amount within each range, it does not exceed the maximum permitted by subsection (1), and



(b) when applied to the lowest amount within each range, it does not produce a rate of loan finance charge exceeding the rate calculated according to paragraph (a) by more than eight percent (8%) of the rate calculated according to paragraph (a).

(6) With respect to a consumer loan not made pursuant to a revolving loan account, the lender may contract for and receive a minimum loan finance charge of not more than thirty dollars (\$30).

(7) The amount of thirty dollars (\$30) in subsection (6) is subject to change under the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). However, notwithstanding IC 24-4.5-1-106(1), the Reference Base Index to be used under this subsection is the Index for October 1992.

(8) In addition to the loan finance charge provided for in this section, a lender may contract for the following:

(a) With respect to a consumer loan that is not made under a revolving loan account, a loan origination fee of not more than two percent (2%) of the loan amount.

(b) With respect to a consumer loan that is made under a revolving loan account, a loan origination fee of not more than two percent (2%) of the line of credit that was contracted for.

(9) The charges provided for in subsection (8):

(a) are not subject to refund or rebate;

(b) are not permitted if a lender makes a settlement charge under IC 24-4.5-3-202(1)(d)(ii); and

(c) are limited to two percent (2%) of the part of the loan that does not exceed two thousand dollars (\$2,000), if the loan is not primarily secured by an interest in land.

Notwithstanding subdivision (a), if a lender retains any part of a loan origination fee charged on a loan that is paid in full by a new loan from the same lender within three (3) months after the date of the prior loan, the lender may charge a loan origination fee only on that part of the new loan not used to pay the amount due on the prior loan, or in the case of a revolving loan, the lender may charge a loan origination fee only on the difference between the amount of the existing credit line and the increased credit line. This subsection does not prohibit a lender from contracting for and receiving a fee for preparing deeds, mortgages, reconveyance and similar documents under IC 24-4.5-3-202 (1)(d)(ii) in addition to the charges provided for in subsection (8). *(Formerly: Acts 1971, P.L.366, SEC.4.) As amended by Acts 1982, P.L.150, SEC.3; P.L.14-1992, SEC.25; P.L.122-1994, SEC.18; P.L.45-1995, SEC.8; P.L.162-1999, SEC.1.*

### **24-4.5-3-202 Additional charges**

Sec. 202. (1) In addition to the loan finance charge permitted by IC 24-4.5-3-201 through IC 24-4.5.3-210, a lender may contract for and receive the following additional charges in connection with a consumer loan:

(a) Official fees and taxes.

(b) Charges for insurance as described in subsection (2).

(c) Annual or periodic participation fees assessed in connection with a revolving loan account.

(d) With respect to a debt secured by an interest in land, the following closing costs, if they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this article:

(i) Fees for title examination, abstract of title, title insurance, property surveys, or similar purposes.

(ii) Fees for preparing deeds, mortgages, and reconveyance, settlement, and similar documents.

(iii) Notary and credit report fees.

- (iv) Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the loan finance charge.
- (v) Appraisal fees.

(e) Notwithstanding provisions of the Federal Consumer Credit Protection Act concerning disclosure, charges for other benefits, including insurance, conferred on the debtor, if the benefits are of value and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are excluded as permissible additional charges from the loan finance charge. With respect to any other additional charge not specifically provided for in this section to be a permitted charge under this subsection, the creditor must submit a written explanation of the charge to the department indicating how the charge would be assessed and the value or benefit to the debtor. Supporting documents may be required by the department. The department shall determine whether the charge would be of benefit to the debtor and is reasonable in relation to the benefits.

(f) A charge not to exceed twenty dollars (\$20) for each return by a bank or other depository institution of a dishonored check, negotiable order of withdrawal, or share draft issued by the debtor.

(g) With respect to a revolving loan account, a fee not to exceed twenty dollars (\$20) in each billing cycle during which the balance due under the revolving loan account exceeds by more than one hundred dollars (\$100) the maximum credit limit for the account established by the lender.

(h) With respect to a revolving loan account, a transaction fee that may not exceed the lesser of the following:

- (i) Two percent (2%) of the amount of the transaction.
- (ii) Ten dollars (\$10).

The additional charges provided for in paragraphs (f), (g), and (h) are not subject to refund or rebate.

(2) An additional charge may be made for insurance in connection with the loan, other than insurance protecting the lender against the debtor's default or other credit loss:

(a) with respect to insurance against loss of or damage to property, or against liability, if the lender furnishes a clear and specific statement in writing to the debtor, setting forth the cost of the insurance if obtained from or through the lender, and stating that the debtor may choose the person, subject to the lender's reasonable approval, through whom the insurance is to be obtained; and

(b) with respect to consumer credit insurance providing life, accident, unemployment or other loss of income, or health coverage, if the insurance coverage is not a factor in the approval by the lender of the extension of credit, and this fact is clearly disclosed in writing to the debtor, and if, in order to obtain the insurance in connection with the extension of credit, the debtor gives specific affirmative written indication of the desire to do so after written disclosure of the cost of the insurance.

*(Formerly: Acts 1971, P.L.366, SEC.4; Acts 1975, P.L.266, SEC.1.) As amended by P.L.247-1983, SEC.16; P.L.139-1990, SEC.1; P.L.181-1991, SEC.3; P.L.14-1992, SEC.26; P.L.122-1994, SEC.19; P.L.45-1995, SEC.9; P.L.80-1998, SEC.6.*

### **24-4.5-3-203 Delinquency charges** *(Repealed by P.L.122-1994, SEC.122.)*

### **24-4.5-3-203.5 Delinquency charges**

Sec. 203.5 Delinquency Charges—(1) With respect to a consumer loan, refinancing, or consolidation, the parties may contract for a delinquency charge of not more than five dollars (\$5.00) on any installment or minimum payment due not paid in full within ten (10) days after its scheduled due date.

(2) A delinquency charge under this section may be collected only once on an installment however long it remains

in default. With regard to a delinquency charge on consumer loans made under a revolving loan account, the delinquency charge may be applied each month that the payment is less than the minimum required payment on the account. A delinquency charge may be collected any time after it accrues. A delinquency charge may not be collected if the installment has been deferred and a deferral charge (IC 24-4.5-3-204) has been paid or incurred.

(3) A delinquency charge may not be collected on an installment or payment due that is paid in full within ten (10) days after its scheduled due date even though an earlier maturing installment, minimum payment, or a delinquency charge on:

- (a) an earlier installment; or
- (b) payments due;

may not have been paid in full. For purposes of this subsection, payments are applied first to current installments or payments due and then to delinquent installments or payments due.

(4) If two (2) installments or parts of two (2) installments of a precomputed loan are in default for ten (10) days or more, the lender may elect to convert the loan from a precomputed loan to a loan in which the finance charge is based on unpaid balances. A lender that makes this election shall make a rebate under the provisions on rebates upon prepayment (IC 24-4.5-3-210) as of the maturity date of the first delinquent installment, and thereafter may make a loan finance charge as authorized by the provisions on the loan finance charges for consumer loans (IC 24-4.5-3-201) or supervised loans (IC 24-4.5-3-508). The amount of the rebate shall not be reduced by the amount of any permitted minimum charge (IC 24-4.5-3-210). Any deferral charges made on installments due at or after the maturity date of the first delinquent installment shall be rebated, and no further deferral charges shall be made.

(5) The amount of five dollars (\$5) in subsection (1) is subject to change pursuant to the section on adjustment of dollar amounts (IC 24-4.5-1-106).

(6) If the parties provide by contract for a delinquency charge that is subject to change, the lender shall disclose that the amount of the delinquency charge is subject to change as allowed by IC 24-4.5-1-106. *As added by P.L.247-1983, SEC.17. As amended by P.L.181-1991; P.L.115-1992, SEC.2; P.L.14-1992, SEC.27; P.L.122-1994, SEC.20; P.L.45-1995, SEC.10.*

### **24-4.5-3-204 Deferral charges**

Sec. 204. Deferral Charges—(1) With respect to a precomputed consumer loan, refinancing, or consolidation, the parties before or after default may agree in writing to a deferral of all or part of one or more unpaid installments, and the lender may make and collect a charge not exceeding the rate previously stated to the debtor pursuant to the provisions on disclosure (Part 3) applied to the amount or amounts deferred for the period of deferral calculated without regard to difference in the lengths of months, but proportionally for a part of a month, counting each day as one-thirtieth (1/30) of a month. A deferral charge may be collected at the time it is assessed or at any time thereafter.

(2) The lender, in addition to the deferral charge, may make appropriate additional charges (24-4.5-3-202), and the amount of these charges which is not paid in cash may be added to the amount deferred for the purpose of calculating the deferral charge.

(3) The parties may agree in writing at the time of a precomputed consumer loan, refinancing, or consolidation that if an installment is not paid within ten (10) days after its due date, the lender may unilaterally grant a deferral and make charges as provided in this section. No deferral charge may be made for a period after the date that the lender elects to accelerate the maturity of the agreement.

(4) A delinquency charge made by the lender on an installment may not be retained if a deferral charge is made pursuant to this section with respect to the period of delinquency. (*Formerly: Acts 1971, P.L.366, SEC.4.*)

### **24-4.5-3-205 Loan finance charge on refinancing**

Sec. 205. Loan Finance Charge on Refinancing—With respect to a consumer loan, refinancing, or consolidation, the lender may by agreement with the debtor refinance the unpaid balance and may contract for and receive a loan finance charge based on the principal resulting from the refinancing at a rate not exceeding that permitted by the provisions on loan finance charge for consumer loans (IC 24-4.5-3-201) or the provisions on loan finance charge for supervised loans (IC 24-4.5-3-508), whichever is appropriate. For the purpose of determining the loan finance charge permitted, the principal resulting from the refinancing comprises the following:

(1) if the transaction was not precomputed, the total of the unpaid balance and the accrued charges on the date of the refinancing, or, if the transaction was precomputed, the amount which the debtor would have been required to pay upon prepayment pursuant to the provisions on rebate upon prepayment (IC 24-4.5-3-210) on the date of refinancing; and

(2) appropriate additional charges (IC 24-4.5-3-202), payment of which is deferred. (*Formerly: Acts 1971, P.L.366, SEC.4). As amended by P.L.14-1992, SEC.28.*

### **24-4.5-3-206 Loan finance charge on consolidation**

Sec. 206. Loan Finance Charge on Consolidation—(1) If a debtor owes an unpaid balance to a lender with respect to a consumer loan, refinancing, or consolidation, and becomes obligated on another consumer loan, refinancing, or consolidation with the same lender, the parties may agree to a consolidation resulting in a single schedule of payments. If the previous consumer loan, refinancing, or consolidation was not precomputed, the parties may agree to add the unpaid amount of principal and accrued charges on the date of consolidation to the principal with respect to the subsequent loan. If the previous consumer loan, refinancing, or consolidation was precomputed, the parties may agree to refinance the unpaid balance pursuant to the provisions on refinancing (IC 24-4.5-3-205) and to consolidate the principal resulting from the refinancing by adding it to the principal with respect to the subsequent loan. In either case the lender may contract for and receive a loan finance charge based on the aggregate principal resulting from the consolidation at a rate not in excess of that permitted by the provisions on loan finance charge for consumer loans (IC 24-4.5-3-201) or the provisions on loan finance charge for supervised loans (IC 24-4.5-3-508), whichever is appropriate.

(2) The parties may agree to consolidate the unpaid balance of a consumer loan with the unpaid balance of a consumer credit sale. The parties may agree to refinance the previous unpaid balance pursuant to the provisions on refinancing sales (IC 24-4.5-2-205) or the provisions on refinancing loans (IC 24-4.5-3-205), whichever is appropriate, and to consolidate the amount financed resulting from the refinancing or the principal resulting from the refinancing by adding it to the amount financed or principal with respect to the subsequent sale or loan. The aggregate amount resulting from the consolidation shall be deemed principal, and the creditor may contract for and receive a loan finance charge based on the principal at a rate not in excess of that permitted by the provisions on loan finance charge for consumer loans (IC 24-4.5-3-201) or the provisions on loan finance charge for supervised loans (IC 24-4.5-3-508), whichever is appropriate. (*Formerly: Acts 1971, P.L.366, SEC.4).*

### **24-4.5-3-207 Conversion to revolving loan account**

Sec. 207. Conversion to Revolving Loan Account—The parties may agree to add to a revolving loan account the unpaid balance of a consumer loan, not made pursuant to a revolving loan account, or are financing, or consolidation thereof, or the unpaid balance of consumer credit sale, refinancing or consolidation, for the purpose of this section

(1) the unpaid balance of a consumer loan, refinancing, or consolidation is an amount equal to the principal determined according to the provisions on refinancing (IC 24-4.5-3-205) and

(2) the unpaid balance of a consumer credit sale, refinancing, or consolidation is an amount equal to the amount financed determined according to the provisions on refinancing (IC 24-4.5-2-205). (*Formerly: Acts 1971, P.L.366, SEC.4).*

### **24-4.5-3-208 Advances to perform covenants of debtor**

Sec. 208. Advances to Perform Covenants of Debtor— (1) If the agreement with respect to a consumer loan, refinancing, or consolidation contains covenants by the debtor to perform certain duties pertaining to insuring or preserving collateral and if the lender pursuant to the agreement pays for performance of the duties on behalf of the debtor, the lender may add the amounts paid to the debt. Within a reasonable time after advancing any sums, he shall state to the debtor in writing the amount of the sums advanced, any charges with respect to this amount, and any revised payment schedule and, if the duties of the debtor performed by the lender pertain to insurance, a brief description of the insurance paid for by the lender including the type and amount of coverages. No further information need be given.

(2) A loan finance charge may be made for sums advanced pursuant to subsection (1) at a rate not exceeding the rate stated to the debtor pursuant to the provisions on disclosure (Part 3) with respect to the loan, refinancing, or consolidation, except that with respect to a revolving loan account the amount of the advance may be added to the unpaid balance of the debt and the lender may make a loan finance charge not exceeding that permitted by the provisions on loan finance charge for consumer loans (IC 24-4.5-3-201) or for supervised loans (IC 24-4.5-3-508), whichever is appropriate. *(Formerly: Acts 1971, P.L.366, SEC.4).*

### 24-4.5-3-209 Right to prepay

Sec. 209 Right to Prepay—(1) Subject to the provisions on rebate upon prepayment (24-4.5-3-210), the debtor may prepay in full the unpaid balance of a consumer loan, refinancing, or consolidation at any time without penalty. With respect to a consumer loan that is primarily secured by an interest in land, a lender may contract for a penalty for prepayment of the loan in full, not to exceed two percent (2%) of any amount prepaid within sixty (60) days of the date of the prepayment in full, after deducting all refunds and rebates as of the date of the prepayment. However, the penalty may not be imposed:

- (a) if the loan is refinanced or consolidated with the same creditor;
- (b) for prepayment by proceeds of any insurance or acceleration after default; or
- (c) after three (3) years from the contract date.

(2) At the time of prepayment of a consumer loan not subject to the provisions of rebate upon prepayment (IC 24-4.5-3-210), the total finance charge, including the prepaid finance charge but excluding the loan origination fee allowed under IC 24-4.5-3-201, may not exceed the maximum charge allowed under this chapter for the period the loan was in effect. For the purposes of determining compliance with this subsection, the total finance charge does not include the following:

- (a) The loan origination fee allowed under IC 24-4.5-3-201.
- (b) The borrower paid mortgagebroker fee, if any, paid to a person who does not control, is not controlled by, or is not under common control with, the creditor holding the loan at the time a consumer loan is prepaid.

(3) The creditor or mortgage servicer shall provide an accurate payoff of the consumer loan to the debtor within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's written request for the accurate consumer loan payoff amount. A creditor or mortgage servicer who fails to provide the accurate consumer loan payoff amount is liable for:

(a) one hundred dollars (\$100) if an accurate consumer loan payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after the creditor or mortgage servicer receives the debtor's first written request: and

(b) the greater of:

(i) one hundred dollars (\$100); or

(ii) the loan finance charge that accrues on the loan from the date the creditor or mortgage servicer

receives the first written request until the date on which the accurate consumer loan payoff amount is provided;

if an accurate consumer loan payoff amount is not provided by the creditor or mortgage servicer within ten (10) calendar days after the creditor or mortgage servicer received the debtor's second written request, and the creditor or mortgage servicer failed to comply with subdivision (a).

A liability under this subsection is an excess charge under IC 24-4.5-5-202. (Formerly: Acts 1971, P.L.366, SEC.4.) As amended by P.L.14-1992, SEC.29; P.L.122-1994, SEC.21; P.L.23-2000, SEC.6; P.L.159-2001, SEC.1.

### 24-4.5-3-210 Rebate upon prepayment

Sec. 210. Rebate upon Prepayment—(1) Except as provided in subsection (2), upon prepayment in full of the unpaid balance of a precomputed consumer loan, refinancing, or consolidation, an amount not less than the unearned portion of the loan finance charge calculated according to this section shall be rebated to the debtor. If the rebate otherwise required is less than one dollar (\$1), no rebate need be made.

(2) Upon prepayment in full of a consumer loan, refinancing, or consolidation, other than one (1) under a revolving loan account, if the loan finance charge earned is less than any permitted minimum loan finance charge (IC 24-4.5-3-201 (6) or IC 24-4.5-3-508 (7)) contracted for, whether or not the consumer loan, refinancing, or consolidation is precomputed, the lender may collect or retain the minimum loan finance charge, as if earned, not exceeding the loan finance charge contracted for.

(3) The unearned portion of the loan finance charge is a fraction of the loan finance charge of which the numerator is the sum of the periodic balances scheduled to follow the computational period in which prepayment occurs, and the denominator is the sum of all periodic balances under either the loan agreement or, if the balance owing resulted from a refinancing (IC 24-4.5-3-205) or a consolidation (IC 24-4.5-3-206), under the refinancing agreement or consolidation agreement.

(4) In this section:

(a) “**periodic balance**” means the amount scheduled to be outstanding on the last day of a computational period before deducting the payment, if any, scheduled to be made on that day;

(b) “**computation period**” means one (1) month if one-half (½) or more of the intervals between scheduled payments under the agreement is one (1) month or more, and otherwise means one (1) week;

(c) the “**interval**” to the due date of the first scheduled installment or the final scheduled payment date is measured from the date of a loan, refinancing or consolidation, and includes either the first or last day of the interval;

(d) if the interval to the due date of the first scheduled installment does not exceed one (1) month by more than fifteen (15) days when the computational period is one (1) month, or eleven (11) days when the computational period is one (1) week, the interval shall be considered as one computational period.

(5) This subsection applies only if the schedule of payments is not regular.

(a) If the computational period is one month and

(i) if the number of days in the interval to the due date of the first scheduled installment is less than one (1) month by more than five (5) days, or more than one month by more than five (5) but not more than fifteen (15) days, the unearned loan finance charge shall be increased by an adjustment for each day by which the interval is less than one (1) month and, at the option of the lender, may be reduced by an adjustment for each day by which the interval is more than one (1) month; the adjustment for each day shall be one-thirtieth

(1/30) of that part of the loan finance charge earned in the computational period prior to the due date of the first scheduled installment assuming that period to be one (1) month; and

(ii) if the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full month, the additional number of days shall be considered a computational period only if sixteen (16) days or more. This subparagraph applies whether or not subparagraph (i) applies.

(b) Notwithstanding paragraph (a), if the computational period is one (1) month, the number of days in the interval to the due date of the first installment exceeds one month by not more than fifteen (15) days, and the schedule of payments is otherwise regular, the lender, at the lender's option, may exclude the extra days and the charge for the extra days in computing the unearned loan finance charge; but if the lender does so and a rebate is required before the due date of the first scheduled installment, the lender shall compute the earned charge for each elapsed day as one-thirtieth (1/30) of the amount the earned charge would have been if the first interval had been one (1) month.

(c) If the computational period is one (1) week and:

(i) if the number of days in the interval to the due date of the first scheduled installment is less than five (5) days, or more than nine (9) days but not more than eleven (11) days, the unearned loan finance charge shall be increased by an adjustment for each day by which the interval is less than seven (7) days and, at the option of the lender, may be reduced by an adjustment for each day by which the interval is more than seven (7) days; the adjustment for each day shall be one-seventh (1/7) of that part of the loan finance charge earned in the computational period prior to the due date of the first scheduled installment assuming that period to be one week; and

(ii) if the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full week, the additional number of days shall be considered a computational period only if five (5) days or more. This subparagraph applies whether or not subparagraph (i) applies.

(6) If a deferral (IC 24-4.5-3-204) has been agreed to, the unearned portion of the loan finance charge shall be computed without regard to the deferral. The amount of deferral charge earned at the date of prepayment shall also be calculated. If the deferral charge earned is less than the deferral charge paid, the difference shall be added to the unearned portion of the loan finance charge. If any part of a deferral charge has been earned but has not been paid, that part shall be subtracted from the unearned portion of the loan finance charge or shall be added to the unpaid balance.

(7) This section does not preclude the collection or retention by the lender of delinquency charges (IC 24-4.5-3-203, repealed in 1994).

(8) If the maturity is accelerated for any reason and judgment is obtained, the debtor is entitled to the same rebate as if payment had been made on the date judgment is entered.

(9) Upon prepayment in full of a consumer loan by the proceeds of consumer credit insurance (IC 24-4.5-4-103), the debtor or the debtor's estate shall pay the same loan finance charge or receive the same rebate as though the debtor had prepaid the agreement on the date the proceeds of the insurance are paid to the lender, but no later than ten (10) business days after satisfactory proof of loss is furnished to the lender. This subsection applies whether or not the loan is precomputed.

(10) Upon prepayment in full of a transaction with a term of more than sixty-one (61) months, the unearned loan finance charge shall be computed by applying the disclosed annual percentage rate that would yield the loan finance charge originally contracted for to the unpaid balances of the amount financed for the full computational periods following the prepayment, as originally scheduled or as deferred. *(Formerly: Acts 1971, P.L.366, SEC.4.) As amended by P.L.14-1992, SEC.30; P.L.122-1994, SEC.22; P.L.2-1995, SEC.92; P.L.176-1996. SEC.6.*

Hold for future use.



## Part 3. Disclosure

### 24-4.5-3-301 Applicability; information required

Sec. 301. (1) For the purposes of this section, “consumer loan” includes a loan secured primarily by an interest in land which is a mortgage transaction if the loan is otherwise a consumer loan (IC 24-4.5-3-104).

(2) The lender shall disclose to the debtor to whom credit is extended with respect to a consumer loan the information required by the Federal Consumer Credit Protection Act.

(3) For purposes of subsection (2), disclosures shall not be required on a consumer loan if the transaction is exempt from the Federal Consumer Credit Protection Act. *(Formerly: Acts 1971, P.L.366, SEC.4; Acts 1975, P.L.267, SEC.1). As amended by Acts 1981, P.L.218, SEC.6; Acts 1981, P.L.217, SEC.2; P.L.247-1983, SEC.18; P.L.45-1995, SEC.11.*

**24-4.5-3-302 to 24-4.5-3-311 Repealed** *(Repealed by P.L.247-1983. SEC.26.)*

## Part 4. Limitations on Agreements and Practices

### 24-4.5-3-401 Scope

Sec. 401. Scope—This Part applies to consumer loans. (*Formerly: Acts 1971, P.L.366, SEC.4.*)

### 24-4.5-3-402 Balloon payments

Sec. 402. (1) With respect to a consumer loan, other than one pursuant to a revolving loan account or one on which only loan finance charges are payable prior to the time that the final scheduled payment is due, if any scheduled payment is more than twice as large as the average of earlier scheduled payments, the debtor has the right to refinance the amount of that payment at the time it is due without penalty. The terms of the refinancing shall be no less favorable to the debtor than the terms of the original loan. This section does not apply to the extent that the payment schedule is adjusted to the seasonal or irregular income of the debtor.

(2) For the purposes of this section, “**terms of the refinancing**” means:

(a) in the case of a fixed-rate consumer loan, the individual payment amounts, the charges as a result of default by the debtor, and the rate of the loan finance charge; and (b) in the case of a variable rate consumer loan, the method used to determine the individual payment amounts, the charges as a result of default by the debtor, the method used to determine the rate of the loan finance charge, the circumstances under which the rate of the loan finance charge may increase, and any limitations on the increase in the rate of the loan finance charge. (*Formerly: Acts 1971, P.L.366, SEC.4.* As amended by P.L.247-1983, SEC.19.

### 24-4.5-3-403 No assignment of earnings

Sec. 403. No Assignment of Earnings—(1) A lender may not take an assignment of earnings of the debtor for payment or as security for payment of a debt arising out of a consumer loan or otherwise. An assignment of earnings in violation of this section is unenforceable by the assignee of the earnings and revocable by the debtor. This section does not prohibit an employee from authorizing deductions from his earnings if the authorization is revocable and is otherwise permitted by law.

(2) A sale of unpaid earnings made in consideration of the payment of money to or for the account of the seller of the earnings is deemed to be a loan to him secured by an assignment of earnings. (*Formerly: Acts 1971, P.L.366, SEC.4.*)

### 24-4.5-3-404 Attorney’s fees

Sec. 404. Attorney’s Fees With respect to a consumer loan the agreement may provide for the payment by the debtor of reasonable attorney’s fees after default and referral to an attorney not a salaried employee of the lender. A provision in violation of this section is unenforceable. (*Formerly: Acts 1971, P.L.366, SEC.4.* As amended by P.L.152-1986, SEC.64; P.L.14-1992, SEC.31.

### 24-4.5-3-405 Limitation on default charges

Sec. 405. Limitation on Default Charges—Except for reasonable expenses incurred in realizing on a security interest, the agreement with respect to a consumer loan may not provide for charges as a result of default by the debtor other than those authorized by this Article. A provision in violation of this section is unenforceable. (*Formerly: Acts 1971, P.L.366, SEC.4.*)

**24-4.5-3-406 Notice of assignment**

Sec. 406. Notice of Assignment—The debtor is authorized to pay the original lender until he receives notification of assignment of rights to payment pursuant to a consumer loan and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the debtor may pay the original lender. (*Formerly: Acts 1971, P.L.366, SEC.4*).

**24-4.5-3-407 Authorization to confess judgment prohibited**

Sec. 407. Authorization to Confess Judgment Prohibited—A debtor may not authorize any person to confess judgment on a claim arising out of a consumer loan. An authorization in violation of this section is void. (*Formerly: Acts 1971, P.L.366, SEC.4*).

**24-4.5-3-408 Time for crediting payments**

Sec. 408. (1) This section also applies to revolving loan accounts.

(2) Except as provided in subsection (3) a creditor shall credit a payment to a consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance charge or other charge, including a late charge. A delay in posting does not violate this section so long as the payment is credited as of the date of receipt.

(3) If a creditor specifies requirements for the consumer to follow in making payments of the contract, payment coupon book, payment coupon or statement, or periodic statement, but accepts a payment that does not conform to the requirements, the creditor shall credit the payment within two (2) days of receipt of the payment.

(4) If a creditor fails to credit a payment as required by this section in time to avoid the imposition of a finance or other charge, including a delinquency charge, the creditor shall adjust the consumer's account so that the charges imposed are credited to the consumer's account during the next payment period. *As added by Acts 1999, P.L.162, SEC.2.*

## Part 5. Supervised Loans

### 24-4.5-3-501 Definitions; “supervised loan” and “supervised lender”

Sec. 501. Definitions:

(1) “**Supervised loan**” means a consumer loan in which the rate of the loan finance charge exceeds twenty-one percent (21%) per year as determined according to the provisions on loan finance charge for consumer loans (IC 24-4.5-3-201).

(2) “**Supervised lender**” means a person authorized to make or take assignments of supervised loans. (*Formerly: Acts 1971, P.L.366, SEC.4). As amended by Acts 1982, P.L.150, SEC.4; P.P.122-1994, SEC.23.*

### 24-4.5-3-502 Authority to make consumer loans

Sec. 502. (1) Authority to Make Consumer Loans—Unless a person is a supervised financial organization or has first obtained a license from the department the person shall not regularly engage in this state in the business of:

- (a) making consumer loans; or
- (b) taking assignments of and undertaking direct collection of payments from or enforcement of rights against debtors arising from consumer loans

However, an assignee may collect and enforce for three (3) months without a license if the assignee promptly applies for a license and the assignee’s application has not been denied. (*Formerly: Acts 1971, P.L.366, SEC.4). As amended by P.L.14-1992, SEC.32; P.L.122-1994, SEC.24; P.L.176-1996, SEC.7; P.L.23-2000, SEC.7.*

### 24-4.5-3-503 License to make consumer loans

Sec. 503. License to Make Consumer Loans— (1) The Department shall receive and act on all applications for licenses to make consumer loans. Applications must be as prescribed by the director of the department of financial institutions.

(2) A license shall not be issued unless the department finds that the financial responsibility, character and fitness of the applicant, and of the members of the applicant (if the applicant is a co-partnership or an association) and of the officers and directors of the applicant (if the applicant is a corporation), are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this article. The director is entitled to request evidence of compliance with this section at the time of application or after a license is issued. The evidence requested includes, but is not limited to, an official report of criminal activity of the applicant from the state law enforcement agency or criminal history records repository of the state in which the applicant resides.

(3) Upon written request, the applicant is entitled to a hearing on the question of the qualifications of the applicant for a license as provided in IC 4-21.5.

(4) The applicant shall pay the following fees at the time designated by the department:

- (a) An initial license fee as established by the department under IC 28-11-3-5.
- (b) An initial investigation fee as established by the department under IC 28-11-3-5.
- (c) An annual renewal fee as established by the department under IC 28-11-3-5.
- (d) A fee as established by the department under IC 28-11-3-5 may be charged for each day the annual renewal fee is delinquent.

(5) The applicant may deduct the fees required under subsection 4(a) through 4(c) from the filing fees paid under IC 24-4.5-6-203.

(6) A loan license issued under this section is not assignable or transferable.

*(Formerly: Acts 1971, P.L.366, SEC.4.) As amended by P.L.14-1992, SEC.33; P.L.122-1994, SEC.25; P.L.80-1998, SEC.7; P.L.23-2000, SEC.8.*

### **24-4.5-3-503.5 Revocation**

(a) A license issued by the department authorizing a person to make consumer loans under this article shall be revoked by the department if the person fails to:

- (1) file any renewal form required by the department; or
- (2) pay any license renewal fee described under section 503 of this chapter;

for a period of at least two (2) years.

(b) a person whose license is revoked under this section may:

- (1) pay all delinquent fees and apply for a new license; or
- (2) appeal the revocation to the department for an administrative review under IC 4-21.5-3. Pending the decision resulting from the hearing under IC 4-21.5-3 concerning the license revocation, the license remains in force.

*As added by P.L.176-1996, SEC.8.*

### **24-4.5-3-504 Revocation or suspension of license**

Sec. 504. Revocation or Suspension of License—(1) the Department may issue to a person licensed to make consumer loans an order to show cause why the license should not be revoked or suspended for a period determined by the department. The order shall state the place for a hearing and set a time for the hearing that is no less than ten (10) days from the date of the order. After the hearing the department shall revoke or suspend the license if the department finds that:

- (a) the licensee has repeatedly and willfully violated this Article or any rule or order lawfully made pursuant to this Article; or
- (b) facts or conditions exist which would clearly have justified the department in refusing to grant a license had these facts or conditions been known to exist at the time the application for the license was made.

(2) Except as provided in section 503.5 of this chapter, no revocation or suspension of a license is lawful unless prior to institution of proceedings by the department notice is given to the licensee of the facts or conduct which warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for retention of the license.

(3) If the department finds that probable cause for revocation of a license exists and that enforcement of this Article requires immediate suspension of the license pending investigation, the department may, after a hearing upon five (5) days' written notice, enter an order suspending the license for not more than thirty (30) days.

(4) Whenever the department revokes or suspends a license, the department shall enter an order to that effect and forthwith notify the licensee of the revocation or suspension. Within five (5) days after the entry of the order the department shall deliver to the licensee a copy of the order and the findings supporting the order.

(5) Any person holding a license to make consumer loans may relinquish the license by notifying the department in writing of its relinquishment, but this relinquishment shall not affect the person's liability for acts previously committed.

(6) No revocation, suspension, or relinquishment of a license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any debtor.

(7) The department may reinstate a license, terminate a suspension, or grant a new license to a person whose license has been revoked or suspended if no fact or condition then exists which clearly would have justified the department in refusing to grant a license.

(8) If the director:

- (a) has just cause to believe an emergency exists from which it is necessary to protect the interest of the public;  
or
- (b) determines that the license was obtained for the benefit of, or on behalf of, a person who does not qualify for a license;

the director may proceed with the revocation of the license under IC 4-21.5-3-6. (*Formerly: Acts 1971, P.L.366, SEC.4). As amended by P.L.14-1992, SEC.34; P.L.176-1996, SEC.9; P.L.80-1998, SEC.8..*

### **24-4.5-3-505 Records; reports**

Sec. 505. Records; Reports— (1) Every licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the department to determine whether the licensee is complying with the provisions of this Article. The record keeping system of a licensee shall be sufficient if the licensee makes the required information reasonably available. The department shall determine the sufficiency of the records and whether the licensee has made the required information reasonably available. The department shall be given free access to the records wherever located. The records pertaining to any loan shall be retained for two (2) years after making the final entry relating to the loan, but in the case of a revolving loan account the two (2) years is measured from the date of each entry.

(2) Every licensee shall file with the department a composite report as required by the department, but not more frequently than annually, in the form prescribed by the department relating to all consumer loans made by the licensee. The department shall consult with comparable officials in other states for the purpose of making the kinds of information required in the reports uniform among the states. Information contained in the reports shall be confidential and may be published only in composite form. The department may impose a fee of five dollars (\$5) for each day that a licensee fails to file the report required by this subsection.

(3) Every licensee shall file notification with the department if the licensee:

- (a) has a change in name, address, or principals;
- (b) opens a new branch, closes an existing branch, or relocates an existing branch;
- (c) files for bankruptcy or reorganization or
- (d) is subject to revocation or suspension proceedings by a state or governmental authority with regard to the licensee's activities.

not later than thirty (30) days after the date of the event described in this subsection.

(4) Every licensee shall file notification with the department if a key officer or director of the licensee:

- (a) is under a felony indictment related to the licensee's activities; or

(b) has been convicted of a felony related to the licensee's activities;

not later than thirty (30) days after the date of the event described in this subsection.

*(Formerly: Acts 1971, P.L.366, SEC.4.) As amended by P.L.14-1992, SEC.35; P.L.122-1994, SEC.26; P.L.45-1995, SEC.12; P.L.172-1997, SEC.5; P.L.134/63-2001, SEC.3.*

### **24-4.5-3-505.5 Automated loan machine:**

(a) As used in this section, "automated loan machine" means an unmanned machine that performs routine lending functions,

(b) A licensee may make loans through an automated loan machine at an offsite location if the licensee:

(1) notifies the department in writing of the existence and location of the automated loan machine;

(2) maintains at a location licensed or approved by the department the books, accounts, records, and files concerning transactions performed through the automated loan machine; and

(3) posts at the offsite location where the automated loan machine is located the:

(A) address where the books, accounts, records and files are located; and

(B) telephone number at which the licensee may be contacted. *As added by P.L.172-1997, SEC. 6.*

### **24-4.5-3-506 Examinations and investigations**

Sec. 506. Examinations and Investigations— (1) The department shall examine periodically at such intervals as the department deems appropriate the loans, business, and records of every licensee. For these purposes the department shall have free and reasonable access to the offices, places of business, and records of the lender.

(2) If the lender's records are located outside this State, the lender, at the lender's option shall make them available to the department at a convenient location within this State, or pay the reasonable and necessary expenses for the department or his representative to examine them at the place where they are maintained. The department may designate representatives, including comparable officials of the State in which the records are located, to inspect them on the department's behalf.

(3) For the purposes of this section, the department may administer oaths or affirmations, and upon the department's own motion or upon request of any party may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(4) Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the department may apply to any civil court for an order compelling compliance. *(Formerly: Acts 1971, P.L.366, SEC.4). As amended by P.L.14-1992, SEC.36; P.L.45-1995, SEC.13.*

### **24-4.5-3-507 Application of administrative procedure act**

Sec. 507. Application of Administrative Procedure Act Except as otherwise provided, IC 4-21.5 applies to and governs all agency action taken by the department pursuant to IC 24-4.5-3-501 through IC 24-4.5-3-513. *(Formerly: Acts 1971, P.L.366, SEC.4). As amended by P.L.152-1986, SEC.65; P.L.7-1987, SEC.106; P.L.14-1992, SEC.37.*

**24-4.5-3-508 Loan finance charge for supervised loans**

Sec. 508. Loan Finance Charge for Supervised Loans— (1) With respect to a supervised loan including a loan pursuant to a revolving loan account, a supervised lender may contract for and receive a loan finance charge not exceeding that permitted by this section.

(2) The loan finance charge, calculated according to the actuarial method, may not exceed the equivalent of the greater of either of the following:

(a) the total of:

- (i) thirty-six percent (36%) per year on that part of the unpaid balances of the principal which is three hundred dollars (\$300) or less;
- (ii) twenty-one percent (21%) per year on that part of the unpaid balances of the principal which is more than three hundred dollars (\$300) but does not exceed one thousand dollars (\$1,000) ; and
- (iii) fifteen percent (15%) per year on that part of the unpaid balances of the principal which is more than one thousand dollars (\$1,000); or

(b) twenty-one percent (21%) per year on the unpaid balances of the principal.

(3) This section does not limit or restrict the manner of contracting for the loan finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the loan finance charge does not exceed that permitted by this section. If the loan is precomputed,

(a) the loan finance charge may be calculated on the assumption that all scheduled payments will be made when due, and

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (IC 24-4.5-3-210).

(4) The term of a loan for the purposes of this section commences on the date the loan is made. Differences in the lengths of months are disregarded and a day may be counted as one-thirtieth (1/30) of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen (15) days may be treated as a full month if periods of fifteen (15) days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(5) Subject to classifications and differentiations the lender may reasonably establish and make the same loan finance charge on all principal amounts within a specified range. A loan finance charge does not violate subsection (2) if:

(a) when applied to the median amount within each range, it does not exceed the maximum permitted in subsection (2), and

(b) when applied to the lowest amount within each range, it does not produce a rate of loan finance charge exceeding the rate calculated according to paragraph (a) by more than eight percent (8%) of the rate calculated according to paragraph (a).

(6) The amounts of three hundred dollars (\$300) and one thousand dollars (\$1,000) in subsection (2) and thirty dollars (\$30) in subsection (7) are subject to change pursuant to the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). For the adjustment of the amount of thirty dollars (\$30), the Reference Base Index to be used is the Index for October 1992.

(7) With respect to a supervised loan not made pursuant to a revolving loan account, the lender may contract for and receive a minimum loan finance charge of not more than thirty dollars (\$30). *(Formerly: Acts 1971, P.L.366, SEC.4.) As amended by Acts 1981, P.L.219, SEC.4; Acts 1982, P.L.149, SEC.4; Acts 1982, P.L.150, SEC.5; P.L.14-1992, SEC.38; P.L.122-1994, SEC.27.*



**24-4.5-3-508.5 Repealed** *(Repealed by Acts 1982, P.L.150, SEC.8.)***24-4.5-3-509 Use of multiple agreements**

Sec. 509. Use of Multiple Agreements—With respect to a consumer loan, no lender may permit any person, or husband and wife, to become obligated in any way under more than one loan agreement with the lender or with a person related to the lender, with intent to obtain a higher rate of loan finance charge than would otherwise be permitted by the provisions on loan finance charge for supervised loans (IC 24-4.5-3-508) or to avoid disclosure of an annual percentage rate pursuant to the provisions on disclosure (Part 3). The excess amount of loan finance charge provided for in agreements in violation of this section is an excess charge for the purposes of the provisions on effect of violations on rights of parties (IC 24-4.5-5-202) and the provisions on civil actions by the department (IC 24-4.5-6-113 ). *(Formerly: Acts 1971, P.L.366, SEC.4). As amended by P.L.14-1992, SEC.39.*

**24-4.5-3-510 Restrictions on interest in land as security**

Sec. 510. Restrictions on Interest in Land as Security— (1) With respect to a supervised loan in which the principal is one thousand dollars (\$1,000) or less, a lender may not contract for an interest in land as security. A security interest taken in violation of this section is void.

(2) The amount of one thousand dollars (\$1,000) in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). *(Formerly: Acts 1971, P.L.366, SEC.4).*

**24-4.5-3-511 Regular schedule of payments; maximum loan term**

Sec. 511. Regular Schedule of Payments; Maximum Loan Term— (1) Supervised loans not made pursuant to a revolving loan account and in which the principal is one thousand dollars (\$1,000) or less shall be payable in a single installment or shall be scheduled to be payable in substantially equal installments which shall be payable at equal periodic intervals except to the extent that the schedule of payments is adjusted to the seasonal or irregular income of the debtor and

(a) over a period of not more than thirty-seven (37) months if the principal is more than three hundred dollars (\$300) or

(b) over a period of not more than twenty-five (25) months if the principal is three hundred dollars (\$300) or less.

(2) The amounts of three hundred dollars (\$300) and one thousand dollars (\$1,000) in subsection (1) are subject to change pursuant to the provisions on a adjustment of dollar amounts (IC 24-4.5-1-106). *(Formerly: Acts 1971, P.L.366, SEC.4). As amended by Acts 1982, P.L.149, SEC.5.*

**24-4.5-3-512 Conduct of business other than making loans**

Sec. 512. Conduct of Business Other than Making Loans—A licensee may carry on other business at a location where he makes consumer loans unless he carries on other business for the purpose of evasion or violation of this Article. (*Formerly: Acts 1971, P.L.366, SEC.4.*)

**24-4.5-3-513 Application of other provisions**

Sec. 513. Application of Other Provisions—Except as otherwise provided, all provisions of this Article applying to consumer loans apply to supervised loans. (*Formerly: Acts 1971, P.L.366, SEC.4.*)

**24-4.5-3-514 Repealed** (*Repealed by P.L.14-1992, SEC.165.*)

## Part 6. Loans Other Than Consumer Loans

### 24-4.5-3-601 Loans subject to article by agreement of parties

Sec. 601. Loans Subject to Article by Agreement of Parties—The parties to a loan other than a consumer loan may agree in writing signed by the parties that the loan is subject to the provisions of this Article applying to consumer loans. If the parties so agree, the loan is a consumer loan for the purposes of this Article. (*Formerly: Acts 1971, P.L.366, SEC.4*).

### 24-4.5-3-602 Definition; “consumer related loan”; rate of loan finance charge

Sec. 602. Definition: “**Consumer Related Loan**”; Rate of Loan Finance Charge—(1) A “consumer related loan” is a loan which is not subject to the provisions of IC 24-4.5 applying to consumer loans and in which the principal does not exceed fifty thousand dollars (\$50,000) if the debtor is a person other than an organization.

(2) With respect to a consumer related loan, including one made pursuant to a revolving loan account, the parties may contract for the payment by the debtor of a loan finance charge not in excess of that permitted by the provisions on loan finance charge for consumer loans other than supervised loans (IC 24-4.5-3-201). (*Formerly: Acts 1971, P.L.366, SEC.4*). *As amended by Acts 1981, P.L.219, SEC.6; Acts 1982, P.L.149, SEC.6; Acts 1982, P.L.150, SEC.6; P.L.14-1992, SEC.40; P.L.122-1994, SEC.28*.

### 24-4.5-3-603 Applicability of other provisions to consumer related loans

Sec. 603. Applicability of Other Provisions to Consumer Related Loans—Except for the rate of the loan finance charge and the rights to prepay and to rebate upon prepayment, the provisions of Part 2 of this Chapter apply to a consumer related loan. (*Formerly: Acts 1971, P.L.366, SEC.4*).

### 24-4.5-3-604 Limitation on default charges in consumer related loans

Sec. 604. Limitation on Default Charges on Consumer Related Loans—(1) The agreement with respect to a consumer related loan may provide for only the following charges as a result of the debtor’s default:

- (a) reasonable attorney’s fees and reasonable expenses incurred in realizing on a security interest;
- (b) deferral charges not in excess of twenty-one percent (21%) per year of the amount deferred for the period of deferral; and
- (c) other charges that could have been made had the loan been a consumer loan.

(2) A provision in violation of this section is unenforceable. (*Formerly: Acts 1971, P.L.366, SEC.4*). *As amended by Acts 1982, P.L.150, SEC.7*.

### 24-4.5-3-605 Loan finance charge for other loans

Sec. 605. Loan Finance Charge for Other Loans—With respect to a loan other than a consumer loan or a consumer related loan, the parties may contract for the payment by the debtor of any loan finance charge. (*Formerly: Acts 1971, P.L.366, SEC.4*).

### 24-4.5-3-606 Required disclosures; liability on fraudulently cashed instruments

Sec. 606. (1) In addition to any disclosures otherwise provided by law, a lender soliciting loans using a negotiable

check, facsimile, or other negotiable instrument that may be used by a consumer to activate a new loan shall disclose the following:

“This is a solicitation for a loan. Read the enclosed disclosures before signing this agreement.”

This notice shall be printed in at least ten point type and shall appear conspicuously on the offer.

(2) If a negotiable check, a facsimile, or another instrument is stolen or incorrectly received by someone other than the intended payee and the instrument is fraudulently cashed, the consumer who was the intended payee is not liable for the loan obligation. *As added by Acts 1999, P.L.162, SEC.3.*

# CHAPTER 4. Insurance.

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## Part 1. Insurance in General

### 24-4.5-4-101 Short title

**Sec. 101. Short Title**—This Chapter shall be known and may be cited as Uniform Consumer Credit Code - Insurance. (*Formerly: Acts 1971, P.L.366, SEC.5*).

### 24-4.5-4-102 Scope; relation to Credit Insurance Act; applicability to parties

Sec. 102. (1) Except as provided in subsection (2), this Chapter applies to insurance provided or to be provided in relation to a consumer credit sale (IC 24-4.5-2-104), a consumer lease (IC 24-4.5-2-106), or a consumer loan (IC 24-4.5-3-104).

(2) The provision on cancellation by a creditor (24-4.5-4-304) applies to loans the primary purpose of which is the financing of insurance. No other provision of this Chapter applies to insurance so financed.

(3) This Chapter supplements and does not repeal IC 27-8-4 (the credit insurance act). The provisions of this Article concerning administrative controls, liabilities, and penalties do not apply to persons acting as insurers, and the similar provisions of IC 27-8-4 do not apply to creditors and debtors. (*Formerly: Acts 1971, P.L.366, SEC.5*). As amended by P.L.153-1986, SEC.1.

### 24-4.5-4-103 “Consumer credit insurance” defined

Sec. 103. In this article “**consumer credit insurance**” means insurance, other than insurance on property, by which the satisfaction of debt in whole or in part is a benefit provided, but does not include:

(1) insurance issued as an isolated transaction on the part of the insurer not related to an agreement or plan for insuring debtors of the creditor; or

(2) insurance indemnifying the creditor against loss due to the debtor’s default. (*Formerly: Acts 1971, P.L.366, SEC.5*). As amended by P.L.153-1986, SEC.2.5

### 24-4.5-4-104 Creditor’s provisions of and charge for insurance; excess amount of charge

Sec. 104. Creditor’s Provisions of and Charge for Insurance; Excess Amount of Charge— (1) Except as otherwise provided in this Chapter and subject to the provisions on additional charges (IC 24-4.5-2-202 and IC 24-4.5-3-202) and maximum charges (Part 2 of Chapter 2 and Chapter 3), a creditor may agree to provide insurance, and may contract for and receive a charge for insurance separate from and in addition to other charges. A creditor need not make a separate charge for insurance provided or required by him. This Article does not authorize the issuance of any insurance prohibited under any statute, or rule thereunder, governing the business of insurance.

(2) The excess amount of a charge for insurance provided for in agreements in violation of this Chapter is an excess charge for the purposes of the provisions of the Chapter on remedies and penalties (Chapter 5) as to effect of violations on rights of parties (IC 24-4.5-5-202) and of the provisions of the Chapter on administration (Chapter 6) as to civil actions by the Administrator (IC 24-4.5-6-113). (*Formerly: Acts 1971, P.L.366, SEC.5*). As amended by P.L.14-1992, SEC.41.

**24-4.5-4-105 Conditions applying to insurance to be provided by creditor**

Sec. 105. Conditions Applying to Insurance to be Provided by Creditor—If a creditor agrees with a debtor to provide insurance:

(1) the insurance shall be evidenced by an individual policy or certificate of insurance delivered to the debtor, or sent to him at his address as stated by him, within thirty (30) days after the term of the insurance commences under the agreement between the creditor and debtor; or

(2) the creditor shall promptly notify the debtor of any failure or delay in providing the insurance. *(Formerly: Acts 1971, P.L.366, SEC.5).*

**24-4.5-4-106 Unconscionability**

Sec. 106. Unconscionability—(1) In applying the provisions of the Article on unconscionability (IC 24-4.5-5-108 and IC 24-4.5-6-111) to a separate charge for insurance, consideration shall be given, among other factors, to:

- (a) potential benefits to the debtor including the satisfaction of his obligation;
- (b) the creditor's need for the protection provided by the insurance; and
- (c) the relation between the amount and terms of credit granted and the insurance benefits provided.

(2) If consumer credit insurance otherwise complies with this Chapter and other applicable law, neither the amount nor the term of the insurance nor the amount of a charge therefor is in itself unconscionable. *(Formerly: Acts 1971, P.L.366, SEC.5).*

**24-4.5-4-107 Maximum charge by creditor for insurance**

Sec. 107. Maximum Charge by Creditor for Insurance— (1) Except as provided in subsection (2), if a creditor contracts for or receives a separate charge for insurance, the amount charged to the debtor for the insurance may not exceed the premium to be charged by the insurer, as computed at the time the charge to the debtor is determined, conforming to any rate filings required by law and made by the insurer with the Insurance Commissioner.

(2) A creditor who provides consumer credit insurance in relation to a revolving charge account (IC 24-4.5-2-108) or revolving loan account (IC 24-4.5-3-108) may calculate the charge to the debtor in each billing cycle by applying the current premium rate to

- (a) the average daily unpaid balance of the debt in the cycle;
- (b) the unpaid balance of the debt or a median amount within a specified range of unpaid balances of debt on approximately the same day of the cycle.

The day of the cycle need not be the day used in calculating the credit service charge (IC 24-4.5-2-207) or loan finance charge (IC 24-4.5-3-301 and 24-4.5-3-508), but the specified range shall be the range used for that purpose; or

- (c) the unpaid balances of principal calculated according to the actuarial method.

*(Formerly: Acts 1971, P.L.366, SEC.5).*

**24-4.5-4-108 Refund or credit required; amount**

Sec. 108. Refund or Credit Required; Amount— (1) upon prepayment in full of a consumer credit sale or consumer loan by the proceeds of consumer credit insurance, the debtor or the debtor's estate is entitled to a refund of any portion of a separate charge for insurance which by reason of prepayment is retained by the creditor or returned to the creditor by the insurer unless the charge was computed from time to time on the basis of the balances of the debtor's account.

(2) This chapter does not require a creditor to grant a refund or credit to the debtor if all refunds and credits due to the debtor under this Chapter amount to less than one dollar (\$1), and except as provided in subsection (1) does not require the creditor to account to the debtor for any portion of a separate charge for insurance because

- (a) the insurance is terminated by performance of the insurer's obligation;
- (b) the creditor pays or accounts for premiums to the insurer in amounts and at times determined by the agreement between them; or
- (c) the creditor receives directly or indirectly under any policy of insurance a gain or advantage not prohibited by law.

(3) Except as provided in subsection (2), the creditor or the creditor's assignee shall promptly make an appropriate refund or credit to the debtor for any separate charge made for insurance if:

- (a) the insurance is not provided or is provided for a term shorter than the term for which the charge to the debtor for insurance was computed; or
- (b) the insurance terminates prior to the end of the scheduled term of the insurance because of prepayment in full or otherwise.

(4) A refund or credit required by subsection (3) is appropriate as to amount if it is computed according to a method prescribed or approved by the Insurance Commissioner or a formula filed by the insurer with the Insurance Commissioner at least thirty (30) days before the debtor's right to a refund or credit becomes determinable, unless the method or formula is used after the Insurance Commissioner notifies the insurer that it is disapproved.

(5) If a refund or credit required by subsection (3) is not made within sixty (60) days after the date the insurance is terminated, due to prepayment in full or otherwise, the creditor shall pay to the debtor for each day after the sixty (60) day period has expired an amount equal to the daily interest at the contracted annual percentage rate on the amount of the credit insurance premium refund due at the time of prepayment or termination. *(Formerly: Acts 1971, P.L.366, SEC.5). As amended by P.L.122-1994, SEC.29; P.L.172-1997, SEC. 7.*

**24-4.5-4-109 Existing insurance; choice of insurer**

Sec. 109. Existing Insurance; Choice of Insurer—If a creditor requires insurance, upon notice to the creditor the debtor shall have the option of providing the required insurance through an existing policy of insurance owned or controlled by the debtor, or through a policy to be obtained and paid for by the debtor, but the creditor may for reasonable cause decline the insurance provided by the debtor. *(Formerly: Acts 1971, P.L.366, SEC.5).*

**24-4.5-4-110 Charge for insurance connection with a deferral, duplicate charges  
refinancing, or consolidation;**

Sec. 110. (1) A creditor may not contract for or receive a separate charge for insurance in connection with a deferral (IC 24-4.5-2-204 or IC 24-4.5-3-204), a refinancing (IC 24-4.5-2-205 or IC 24-4.5-3-205), or a consolidation



(IC 24-4.5-2-206 or IC 24-4.5-3-206), unless:

- (a) the debtor agrees at or before the time of the deferral, refinancing, or consolidation that the charge may be made;
- (b) the debtor is or is to be provided with insurance for an amount or a term, or insurance of a kind, in addition to that to which he would have been entitled had there been no deferral, refinancing, or consolidation;
- (c) the debtor receives a refund or credit on account of any unexpired term of existing insurance in the amount that would be required if the insurance were terminated (IC 24-4.5-4-108); and
- (d) the charge does not exceed the amount permitted by this Chapter (IC 24-5.5-4-107).

(2) A creditor may not contract for or receive a separate charge for insurance which duplicates insurance with respect to which the creditor has previously contracted for or received a separate charge. (*Formerly: Acts 1971, P.L.366, SEC.5. As amended by P.L.152-1986, SEC.66.*)

#### **24-4.5-4-111 Cooperation between administrator and insurance commissioner**

Sec. 111. Cooperation Between Administrator and Insurance Commissioner—The department and the Insurance Commissioner are authorized and directed to consult and assist one another in maintaining compliance with this Chapter. They may jointly pursue investigations, prosecute suits, and take other official action, as may seem to them appropriate, either of them is otherwise empowered to take the action. If the department is informed of a violation or suspected violation by an insurer of this Chapter, or of the insurance laws, rules, and regulations of this State, the department shall advise the Insurance Commissioner of the circumstances. (*Formerly: Acts 1971, P.L.366, SEC.5.*)

#### **24-4.5-4-112 Administrative action of commissioner of insurance**

Sec. 112. (1) To the extent that his responsibility under this Chapter requires, the Commissioner of Insurance shall issue rules with respect to insurers, and with respect to refunds (IC 24-4.5-4-108), forms, schedules of premium rates and charges (IC 24-4.5-4-203), and his approval or disapproval thereof and, in case of violation, may make an order for compliance.

(2) IC 4-21.5-3 applies to and governs all agency action taken by the commissioner of insurance pursuant to this section. (*Formerly: Acts 1971, P.L.366, SEC.5. As amended by P.L.152-1986, SEC.67; P.L.7-1987, SEC.107.*)

## **Part 2. Consumer Credit Insurance**

#### **24-4.5-4-201 Term of insurance**

Sec. 201. Term of Insurance— (1) Consumer credit insurance provided by a creditor may be subject to the furnishing of evidence of insurability satisfactory to the insurer. Whether or not such evidence is required, the term of the insurance shall commence no later than when the debtor becomes obligated to the creditor or when the debtor applies for the insurance, whichever is later, except as follows:

- (a) if any required evidence of insurability is not furnished until more than thirty (30) days after the term would otherwise commence, the term may commence on the date when the insurer determines the evidence to be satisfactory; or
- (b) the creditor provides insurance not previously provided covering debts previously created, the term may

commence on the effective date of the policy.

(2) The originally scheduled term of the insurance shall extend at least until the due date of the last scheduled payment of the debt except as follows:

(a) if the insurance relates to a revolving charge account or revolving loan account, the term need extend only until the payment of the debt under the account and may be sooner terminated after at least thirty (30) days notice to the debtor; or

(b) if the debtor is advised in writing that the insurance will be written for a specified shorter time, the term need extend only until the end of the specified time.

(3) The term of the insurance shall not extend more than fifteen (15) days after the originally scheduled due date of the last scheduled payment of the debt unless it is extended without additional cost to the debtor or as an incident to a deferral; refinancing, or consolidation. *(Formerly: Acts 1971, P.L.366, SEC.5).*

#### **24-4.5-4-202 Amount of insurance**

Sec. 202. (1) Except as provided in subsection (2):

(a) in the case of consumer credit insurance providing life coverage, the amount of insurance may not initially exceed the debt and, if the debt is payable in installments, may not at any time exceed the greater of the scheduled or actual amount of the debt; or

(b) in the case of any other consumer credit insurance, the total amount of periodic benefits payable may not exceed the total of scheduled unpaid installments of the debt, and the amount of any periodic benefit may not exceed the original amount of debt divided by the number of periodic installments in which it is payable.

(2) If consumer credit insurance is provided in connection with a revolving charge account or revolving loan account, the amounts payable as insurance benefits may be reasonably commensurate with the amount of debt as it exists from time to time. If consumer credit insurance is provided in connection with a commitment to grant credit in the future, the amounts payable as insurance benefits may be reasonably commensurate with the total from time to time of the amount of debt and the amount of the commitment. *(Formerly: Acts 1971, P.L.366, SEC.5). As amended by P.L.247-1983, SEC.20.*

#### **24-4.5-4-203 Filing and approval of rates and forms**

Sec. 203. (1) A creditor may not use a form, or a schedule of premium rates or charges, the filing of which is required by this section, if the Insurance Commissioner has disapproved the form or schedule and has notified the insurer of his disapproval. A creditor may not use a form or schedule unless:

(a) the form or schedule has been on file with the Insurance Commissioner for thirty (30) days, or has earlier been approved by him; and

(b) the insurer has complied with this section with respect to the insurance.

(2) Except as provided in subsection (3), all policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders relating to consumer credit insurance delivered or issued for delivery in this State, and the schedules of premium rates or charges pertaining thereto, shall be filed by the insurer with the Insurance Commissioner. Within thirty (30) days after the filing of any form or schedule, he shall disapprove it if the premium rates or charges are unreasonable in relation to the benefits provided under the form, or if the form contains provisions which are unjust, unfair, inequitable, or deceptive, or encourage misrepresentation of the coverage, or are contrary to any provision of the IC 27 or of any rule promulgated under IC 27.

(3) If a group policy has been delivered in another state, the forms to be filed by the insurer with the Insurance Commissioner are the group certificates and notices of proposed insurance. He shall approve them if

- (a) they provide the information that would be required if the group policy were delivered in this State; and
- (b) the applicable premium rates or charges do not exceed those established by his rules or regulations.

*(Formerly: Acts 1971, P.L.366, SEC.5). As amended by P.L.152-1986, SEC.68.*

## Part 3. Property and Liability Insurance

### 24-4.5-4-301 Property insurance

Sec. 301. Property Insurance—(1) A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless.

- (a) the insurance covers a substantial risk of loss of or damage to property related to the credit transaction
- (b) the amount, terms, and conditions of the insurance are reasonable in relation to the character and value of the property insured or to be insured; and
- (c) the term of the insurance is reasonable in relation to the terms of credit.

(2) The term of the insurance is reasonable if it is customary and does not extend substantially beyond a scheduled maturity.

(3) A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless the amount financed or principal exclusive of charges for the insurance is three hundred dollars (\$300) or more, and the value of the property is three hundred dollars (\$300) or more.

(4) The amounts of three hundred dollars (\$300) in subsection (3) are subject to change pursuant to the provisions on adjustment of dollar amounts (IC 24-4.5-1-106). (*Formerly: Acts 1971, P.L.366, SEC.5*).

### 24-4.5-4-302 Insurance on creditor's interest only

Sec. 302. Insurance on Creditor's Interest Only—If a creditor contracts for or receives a separate charge for insurance against loss of or damage to property, the risk of loss or damage not willfully caused by the debtor is on the debtor only to the extent of any deficiency in the effective coverage of the insurance, even though the insurance covers only the interest of the creditor. (*Formerly: Acts 1971, P.L.366, SEC.5*).

### 24-4.5-4-303 Liability insurance

Sec. 303. Liability Insurance—A creditor may not contract for or receive a separate charge for insurance against liability unless the insurance covers a substantial risk of liability arising out of the ownership or use of property related to the credit transaction. (*Formerly: Acts 1971, P.L.366, SEC.5*)

### 24-4.5-4-304 Cancellation by creditor

Sec. 304. Cancellation by Creditor—A creditor shall not request cancellation of a policy of property or liability insurance except after the debtor's default or in accordance with a written authorization by the debtor, and in either case the cancellation does not take effect until written notice is delivered to the debtor or mailed to him at his address as stated by him. The notice shall state that the policy may be canceled on a date not less than ten (10) days after the notice is delivered, or, if the notice is mailed, not less than thirteen (13) days after it is mailed. (*Formerly: Acts 1971, P.L.366, SEC.5*).

### IC 24-4.5-4-305 Refund of unearned premium for property insurance upon

**payment of loan**

Sec. 305. Upon the prepayment in full of a consumer credit sale or consumer loans, the creditor or creditor's assignee shall promptly make an appropriate refund of the unearned premium for any property insurance with respect to which the creditor or the credit account of the consumer is a beneficiary. *As Added by P.L.122-1994, Sec.30*

Hold for future use..

## CHAPTER 5. Remedies and Penalties.

### SECTION

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## Part 1. Limitations on Creditors' Remedies

### 24-4.5-5-101 Short title

Sec. 101. Short Title—This Chapter shall be known and may be cited as Uniform Consumer Credit Code Remedies and Penalties. (*Formerly: Acts 1971, P.L.366. SEC.6.*)

### 24-4.5-5-102 Scope

Sec. 102. Scope—This Part<sup>1</sup> applies to actions or other proceedings to enforce rights arising from consumer credit sales, consumer leases, and consumer loans; to garnishments of the earnings of an individual; and, in addition, to extortionate extensions of credit (IC 24-4.5-[5-107](#)). (*Formerly: Acts 1971, P.L.366. SEC.6.*)  
<sup>1</sup>IC 24-4.5-5-101.

### 24-4.5-5-103 Restrictions on deficiency judgments in consumer credit sales

Sec. 103. Restrictions on Deficiency Judgments in Consumer Credit Sales— (1) This section applies to a consumer credit sale of goods or services.

(2) If the seller repossesses or voluntarily accepts surrender of goods which were the subject of the sale and in which he has a security interest and the cash price of the goods repossessed or surrendered was one thousand dollars (\$1,000) or less, the buyer is not personally liable to the seller for the unpaid balance of the debt arising from the sale of the goods, and the seller is not obligated to resell the collateral.

(3) If the seller repossesses or voluntarily accepts surrender of goods which were not the subject of the sale but in which he has a security interest to secure a debt arising from a sale of goods or services or a combined sale of goods and services and the cash price of the sale was one thousand dollars (\$1,000) or less, the buyer is not personally liable to the seller for the unpaid balance of the debt arising from the sale.

(4) For the purpose of determining the unpaid balance of consolidated debts or debts pursuant to revolving charge accounts, the allocation of payments to a debt shall be determined in the same manner as provided for determining the amount of debt secured by various security interests (IC 24-4.5-[2-409](#)).

(5) The buyer may be liable in damages to the seller if the buyer has wrongfully damaged the collateral or if, after default and demand, the buyer has wrongfully failed to make the collateral available to the seller.

(6) If the seller elects to bring an action against the buyer for a debt arising from a consumer credit sale of goods or services, when under this section he would not be entitled to a deficiency judgment if he repossessed the collateral, and obtains judgment

(a) he may not repossess the collateral, and

(b) the collateral is not subject to levy or sale on execution or similar proceedings pursuant to the judgment.

(7) The amounts of one thousand dollars (\$1,000) in subsection (2) and (3) are subject to change pursuant to the provisions on adjustment of dollar amounts (IC 24-4.5-[1-106](#)). (*Formerly: Acts 1971, P.L.366. SEC.6.*)



**24-4.5-5-104 No garnishment before judgment**

Sec. 104. No Garnishment Before Judgment—Prior to entry of judgment in an action against the debtor, no creditor may attach unpaid earnings of the debtor by garnishment or like proceedings. (*Formerly: Acts 1971, P.L.366, SEC.6*).

**24-4.5-5-105 Limitations on garnishment and proceedings supplemental to execution; employer's fee; priority of support order**

Sec. 105. (1) For the purposes of IC 24-4.5-5-101 through IC 24-4.5-5-108:

(a) **“disposable earnings”** means that part of the earnings of an individual, including wages, commissions, income, rents or profits remaining after the deduction from those earnings of amounts required by law to be withheld; and

(b) **“garnishment”** means any legal or equitable proceedings through which the earnings of an individual are required to be withheld by a garnishee, by the individual debtor, or by any other person for the payment of a judgment; and

(c) **“support withholding”** means that part of the earnings are withheld from an individual for child support in accordance with the laws of this state.

(2) Except as provided in subsection (8), the maximum earnings of an individual for any work week which is subjected to garnishment to enforce the payment of one (1) or more judgements against him may not exceed:

(a) twenty-five percent (25%) of his disposable earnings for that week; or

(b) the amount by which his disposable earnings for that week exceed thirty (30) times the Federal minimum hourly wage prescribed by 29 U.S.C. 206(a)(1) in effect at the time the earnings are payable; whichever is less.

In the case of earnings for a pay period other than a week, the earnings shall be computed upon a multiple of the Federal minimum hourly wage equivalent to thirty (30) times the Federal minimum hourly wage as prescribed in this section.

(3) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment or support withholding to enforce any order for the support of any person shall not exceed:

(a) where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used), fifty percent (50%) of such individual's disposable earnings for that week; and

(b) where such individual is not supporting such a spouse or dependent child described in subdivision (a), sixty percent (60%) of such individual's disposable earnings for that week:

except that, with respect to the disposable earnings of any individual for any workweek, the fifty percent (50%) specified in subdivision (a) shall be deemed to be fifty-five percent (55%) and the sixty percent (60%) specified in subdivision (b) shall be deemed to be sixty-five percent (65%), if and to the extent that such earnings are subject to garnishment or support withholding to enforce a support order with respect to a period which is prior to the twelve (12) week period which ends with the beginning of such workweek.

(4) No court may make, execute, or enforce an order or process in violation of this section.

(5) An employer who is required to make deductions from an individual's disposable earnings pursuant to a

garnishment order or series of orders arising out of the same judgment debt (excluding a judgment for payment of child support) may collect, as a fee to compensate the employer for making these deductions, an amount equal to the greater of twelve dollars (\$12) or three percent (3%) of the total amount required to be deducted by the garnishment order or series of orders arising out of the same judgment debt. If the employer chooses to impose a fee, the fee shall be allocated as follows:

- (a) one-half (1/2%) of the fee shall be borne by the debtor, and that amount may be deducted by the employer directly from the employee's disposable earnings.
- (b) one-half (1/2%) of the fee shall be borne by the creditor, and that amount may be retained by the employer from the amount otherwise due the creditor.

The deductions made under this subsection for a collection fee do not increase the amount of the judgment debt for which the fee is collected for the purpose of calculating or collecting judgment interest. This fee may be collected by an employer only once for each garnishment order or series of orders arising out of the same judgment debt. The employer may collect the entire fee from one (1) or more of the initial deductions from the employee's disposable earnings. Alternatively, the employer may collect the fee ratably over the number of pay periods during which deductions from the employee's disposable earnings are required.

(6) The deduction of the garnishment collection fee under subsection 5 (a) or subsection (7) is not an assignment of wages under IC 22-2.6.

(7) An employer who is required to make a deduction from an individual's disposable earnings in accordance with a judgment for payment of child support may collect a fee of two dollars (\$2) each time the employer is required to make the deduction. The fee may be deducted by the employer from the individual's disposable earnings each time the employer makes the deduction for support. If the employer elects to deduct such a fee, the amount to be deducted for the payment of support must be reduced accordingly if necessary to avoid exceeding the maximum amount permitted to be deducted under subsection (3).

(8) A support withholding order takes priority over a garnishment order irrespective of their dates of entry or activation. If a person is subject to a support withholding order and a garnishment order, the garnishment order shall be honored only to the extent that disposable earnings withheld under the support withholding order do not exceed the maximum amount subject to garnishment as computed under subsection (2). (*Formerly: Acts 1971, P.L.366, SEC.6). As amended by Acts 1979, P.L.239, SEC.1; Acts 1982, P.L.151, SEC.1; P.L.248-1983, SEC.1; P.L.237-1985, SEC.1; P.L.102-1986, SEC.3; P.L.148-1988, SEC.1.*)

#### **24-4.5-5-106 No discharge from employment for garnishment**

Sec. 106. No Discharge from Employment for Garnishment—No employer shall discharge an employee for the reason that a creditor or creditors of the employee has subjected or attempted to subject unpaid earnings of the employee to garnishment or like proceedings directed to the employer for the purpose of paying a judgment or judgments. (*Formerly: Acts 1971, P.L.366, SEC.6).*)

**24-4.5-5-107 Extortionate extensions of credit**

Sec. 107. Extortionate Extensions of Credit— (1) If it is the understanding of the creditor and the debtor at the time an extension of credit is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person, the repayment of the extension of credit is unenforceable through civil judicial processes against the debtor.

(2) If it is shown that an extension of credit was made at an annual rate exceeding forty-five percent (45%) calculated according to the actuarial method and that the creditor then had a reputation for the use or threat of use of violence or other criminal means to cause harm to the person, reputation, or property of any person to collect extensions of credit or to punish the nonrepayment thereof, there is prima facie evidence that the extension of credit was unenforceable under subsection (1). (*Formerly: Acts 1971, P.L.366. SEC.6.*)

**24-4.5-5-108 Unconscionability**

Sec. 108. Unconscionability— (1) With respect to a consumer credit sale, consumer lease, or consumer loan, if the court as a matter of law finds the agreement or any clause of the agreement to have been unconscionable at the time it was made the court may refuse to enforce the agreement, or it may enforce the remainder of the agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) If it is claimed or appears to the court that the agreement or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making the determination.

(3) For the purpose of this section, a charge or practice expressly permitted by this Article is not in itself unconscionable. (*Formerly: Acts 1971, P.L.366. SEC.6.*)

## Part 2. Debtors' Remedies

### 24-4.5-5-201 Interests in land

Sec. 201. For purposes of the provisions on civil liability for violation of disclosure provisions (IC 24-4.5-5-203) and on debtor's right to rescind certain transactions (IC 24-4.5-5-204):

(1) consumer credit sale includes a sale of an interest in land which is a mortgage transaction if the sale is otherwise a consumer credit sale (IC 24-4.5-2-104); and

(2) consumer loan includes a loan primarily secured by an interest in land which is a mortgage transaction if the loan is otherwise a consumer loan (IC 24-4.5-3-105). *(Formerly: Acts 1971, P.L.366, SEC.6). As amended by Acts 1981, P.L.218, SEC.7; P.L.152-1986, SEC.69.*

### 24-4.5-5-202 Effect of violations on rights of parties

Sec. 202. Effect of Violations on Rights of Parties—(1) If a creditor has violated the provision of this Article applying to limitations on the schedule of payments or loan term for supervised loans (IC 24-4.5-3-511), the debtor is not obligated to pay the loan finance charge, and has a right to recover from the person violating this Article or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt a penalty in an amount determined by the court not in excess of three times the amount of the loan finance charge. No action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement with respect to which the violation occurred.

(2) If a creditor has violated the provisions of this Article applying to authority to make consumer loans (IC 24-4.5-3-502), the loan is void and the debtor is not obligated to pay either the principal or loan finance charge. If the debtor has paid any part of the principal or of the loan finance charge, the debtor has a right to recover the payment from the person violating this Article or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt. With respect to violations arising from loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than two years after the violation occurred. With respect to violations arising from other loans, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was paid.

(3) A debtor is not obligated to pay a charge in excess of that allowed by this Article, and if the debtor has paid an excess charge the debtor has a right to a refund. A refund may be made by reducing the debtor's obligation by the amount of the excess charge. If the debtor has paid an amount in excess of the lawful obligation under the agreement, the debtor may recover the excess amount from the person who made the excess charge or from an assignee of that person's rights who undertakes direct collection of payments from or enforcement of rights against debtors arising from the debt.

(4) If a debtor is entitled to a refund and a person liable to the debtor refuses to make a refund within a reasonable time after demand, the debtor may recover from that person a penalty in an amount determined by a court not exceeding the greater of either the amount of the credit service or loan finance charge or ten (10) times the amount of the excess charge. If the creditor has made an excess charge in deliberate violation of or in reckless disregard for this Article, the penalty may be recovered even though the creditor has refunded the excess charge. No penalty pursuant to this subsection may be recovered if a court has ordered a similar penalty assessed against the same person in a civil action by the Department (IC 24-4.5-6-113). With respect to excess charges arising from sales made pursuant to revolving charge accounts or from loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than two years after the time the excess charge was made. With respect to excess charges arising from other consumer credit sales or consumer loans, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the

charge was made.

(5) Except as otherwise provided, no violation of this Article impairs rights on a debt.

(6) If an employer discharges an employee in violation of the provisions prohibiting discharge (IC 24-4.5-5-106), the employee may within six (6) months bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for six (6) weeks.

(7) If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error, no liability is imposed under subsections (1), (2), and (4) and the validity of the transaction is not affected.

(8) In any case in which it is found that a creditor has violated this Article, the court may award reasonable attorney's fees incurred by the debtor.

(9) The department may act on behalf of a debtor to enforce the debtor's rights under this section against a creditor who is licensed or registered with the department or is required to be licensed or registered with the department. *(Formerly: Acts 1971, P.L.366, SEC.6). As amended by P.L.181-1991; P.L.122-1994, SEC.31; P.L.172, SEC.8.*

### **24-4.5-5-203 Civil liability for violation of disclosure provisions**

Sec. 203. Civil Liability for Violation of Disclosure Provisions— (1) Except as otherwise provided in this section, a creditor who, in violation of the provisions on disclosure (Part 3), of the Chapter on Credit Sales (Chapter 2) and the Chapter on Loans (Chapter 3), fails to disclose information to a person entitled to the information under this Article is liable to that person in an amount equal to the sum of

(a) the following:

(1) in the case of an individual action, twice the amount of the credit service or loan finance charge in connection with the transaction, but the liability pursuant to this subdivision shall be not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000); or

(2) in the case of a class action, an amount the court allows, except that as to each member of the class no minimum recovery is applicable, and the total recovery under this subdivision in any class action or series of class actions arising out of the same failure to comply by the same creditor may not be more than the lesser of:

(i) five hundred thousand dollars (\$500,000); or

(ii) one percent (1%) of the net worth of the creditor; and

(b) in the case of a successful action to enforce the liability under paragraph (a), the costs of the action together with reasonable attorney's fees as determined by the court. In determining the amount of the award in a class action, the court shall consider, among other relevant factors, the amount of any award granted under the federal Consumer Credit Protection Act (15 U.S.C. 1601 et seq.), the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional.

(2) A creditor has no liability under this section if within sixty (60) days after discovering an error, and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay a credit service charge or loan finance charge in excess of the amount or percentage rate actually disclosed.

(3) A creditor may not be held liable in any action brought under this section for a violation of this Article if the

creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

(4) If there are multiple obligors in a consumer credit transaction or consumer lease, there may not be more than one (1) recovery of damages under subdivision (a)(1) for one (1) violation of this article with respect to that consumer credit transaction or consumer lease.

(5) The multiple failure to disclose to any person any information required under this article to be disclosed in connection with a single account under an open end consumer credit plan, a single consumer credit sale, a consumer loan, a consumer lease, or another extension of consumer credit entitles that person to a single recovery under this section. However, continued failure to disclose after a recovery has been granted gives rise to rights to additional recoveries.

(6) Any action which may be brought under this section against the original creditor in any credit transaction involving a security interest in land may be maintained against any subsequent assignee of the original creditor where the assignee, its subsidiaries, or affiliates were in a continuing business relationship with the original creditor either at the time the credit was extended or at the time of the assignment, unless the assignment was involuntary, or the assignee shows by a preponderance of evidence that it did not have reasonable grounds to believe that the original creditor was engaged in violations of this Article, and that it maintained procedures reasonably adapted to apprise it of the existence of the violations.

(7) No section pursuant to this section may be brought more than one (1) year after the date of the occurrence of the violations.

(8) In this section, creditor includes a person who in the ordinary course of business regularly extends or arranges for the extension of credit, or offers to arrange for the extension of credit. (*Formerly: Acts 1971, P.L.366. SEC.6*).

#### **24-4.5-5-204 Violations**

Sec. 204. Debtor's Right to Rescind Certain Transactions—(1) A violation by a creditor of [Section 125](#) of the Federal Consumer Credit Protection Act (IC 24-4.5-[1-302](#)) concerning the debtor's right to rescind a transaction that is a consumer credit sale or a consumer loan constitutes a violation of IC 24-4.5. A creditor may not accrue interest during the period when a consumer loan may be rescinded under Section 125 of the Federal Consumer Protection Act (15 U.S.C. 1635).

(2) A creditor must make available for disbursement the proceeds of a transaction subject to subsection (1) on the later of:

(A) the date the creditor is reasonably satisfied that the consumer has not rescinded the transaction; or

(B) the first business day after the expiration of the rescission period under subsection (1).

(*Formerly: Acts 1971, P.L.366. SEC.6. As amended by Acts 1982, P.L.149, SEC; P.L.122-1994, SEC.32; P.L.23-2000; SEC.9.*)

*Editor's Note:* For your information we reproduce Section 125 of Federal Consumer Protection Act, as amended, effective September 1, 1995.

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## SECTION 125 - Right of Rescission as to Certain Transactions

(a) *Disclosure of obligor's right to rescind.* Except as otherwise provided in this section, in the case of any consumer credit transaction (including opening or increasing the credit limit for an open end credit plan) in which a security interest, including any such interest arising by operation of law, is or will be retained or acquired in any property which is used as the principal dwelling of the person to whom credit is extended, the obligor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the information and rescission forms required under this section together with a statement containing the material disclosures required under this title, whichever is later, by notifying the creditor, in accordance with regulations of the Board, of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with regulations of the Board, to any obligor in a transaction subject to this section the rights of the obligor under this section. The creditor shall also provide, in accordance with regulations of the Board, appropriate forms for the obligor to exercise his right to rescind any transaction subject to this section.

(b) *Return of money or property following rescission.* When an obligor exercises his right to rescind under subsection (a) of this section, he is not liable for any finance or other charge, and any security interest given by the obligor, including any such interest arising by operation of law, becomes void upon such a rescission. Within 20 days after receipt of a notice of rescission, the creditor shall return to the obligor any money or property given as earnest money, down payment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the obligor, the obligor may retain possession of it. Upon the performance of the creditor's obligations under this section, the obligor shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the obligor shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the obligor, at the option of the obligor. If the creditor does not take possession of the property within 20 days after tender by the obligor, ownership of the property vests in the obligor without obligation on his part to pay for it. The procedures prescribed by this subsection shall apply except when otherwise ordered by a court.

(c) *Rebuttable presumption of delivery of required disclosures.* Notwithstanding any rule of evidence, written acknowledgment of receipt of any disclosures required under this title by a person to whom information, forms, and a statement is required to be given pursuant to this section does no more than create a rebuttable presumption of delivery thereof.

(d) *Modification and waiver of rights.* The Board may, if it finds that such action is necessary in order to permit homeowners to meet bona fide personal financial emergencies, prescribe regulations authorizing the modification or waiver of any rights created under this section to the extent and under the circumstances set forth in those regulations.

(e) *Exempted transactions; reapplication of provisions.* This section **does not apply** to -

- (1) a residential mortgage transaction as defined in [section 103\(w\)](#);

(2) a transaction which constitutes a refinancing or consolidation (with no new advances) of the principal balance then due and any accrued and unpaid finance charges of an existing extension of credit by the same creditor secured by an interest in the same property;

(3) a transaction in which an agency of a State is the creditor; or

(4) advances under a preexisting open end credit plan if a security interest has already been retained or acquired and such advances are in accordance with a previously established credit limit for such plan.

(f) *Time limit for exercise of right.* An obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first, notwithstanding the fact that the information and forms required under this section or any other disclosures required under this chapter have not been delivered to the obligor, except that if (1) any agency empowered to enforce the provisions of this title institutes a proceeding to enforce the provisions of this section within three years after the date of consummation of the transaction, (2) such agency finds a violation of this section, and (3) the obligor's right to rescind is based in whole or in part on any matter involved in such proceeding, then the obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the earlier sale of the property, or upon the expiration of one year following the conclusion of the proceeding, or any judicial review or period for judicial review thereof whichever is later.

(g) *Additional relief.* In any action in which it is determined that a creditor has violated this section, in addition to rescission the court may award relief under [section 130](#) for violations of this title not relating to the right to rescind.

(h) *Limitation on rescission.* An obligor shall have no rescission rights arising solely from the form of written notice used by the creditor to inform the obligor of the rights of the obligor under this section, if the creditor provided the obligor the appropriate form of written notice published and adopted by the Board, or a comparable written notice of the rights of the obligor, that was properly completed by the creditor, and otherwise complied with all other requirements of this section regarding notice.

(i) *Rescission rights in foreclosure.*

(1) *In general.* Notwithstanding [section 139](#), and subject to the time period provided in subsection (f), in addition to any other right of rescission available under this section for a transaction, after the initiation of any judicial or nonjudicial foreclosure process on the primary dwelling of an obligor securing an extension of credit, the obligor shall have a right to rescind the transaction equivalent to other rescission rights provided by this section, if –

(A) a mortgage broker fee is not included in the finance charge in accordance with the laws and regulations in effect at the time the consumer credit transaction was consummated; or

(B) the form of notice of rescission for the transaction is not the appropriate form of written notice published and adopted by the Board or a comparable written notice, and otherwise complied with all the requirements of this section regarding notice.

(2) *Tolerance for disclosures.* Notwithstanding [section 106\(f\)](#), and subject to the time period provided



in subsection (f), for the purposes of exercising any rescission rights after the initiation of any judicial or nonjudicial foreclosure process on the principal dwelling of the obligor securing an extension of credit, the disclosure of the finance charge and other disclosures affected by any finance charge shall be treated as being accurate for purposes of this section if the amount disclosed as the finance charge does not vary from the actual finance charge by more than \$35 or is greater than the amount required to be disclosed under this title.

(3) *Right of recoupment under state law.* Nothing in this subsection affects a consumer's right of rescission in recoupment under State law.

(4) *Applicability.* This subsection shall apply to all consumer credit transactions in existence or consummated on or after the date of the enactment of the Truth in Lending Act Amendments of 1995.

[15 USC 1635. As amended by acts of Oct. 28, 1974 (88 Stat. 1517, 1519); March 31, 1980 (94 Stat. 175); Dec. 26, 1981 (95 Stat. 1515); Oct. 17, 1984 (98 Stat. 2234); and Sept. 1, 1995.]

— End of Section 125 —

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#### **24-4.5-5-205 Refunds and penalties as set-off to obligation**

Sec. 205. Refunds and Penalties as Set-Off to Obligation—Refunds or penalties to which the debtor is entitled pursuant to this Part may be set off against the debtor's obligation, and may be raised as a defense to a suit on the obligation without regard to the time limitations prescribed by this Part. (*Formerly: Acts 1971, P.L.366. SEC.6.*)

Hold for future use.

## Part 3. Criminal Penalties

### 24-4.5-5-301 Knowing violations

Sec. 301. (1) A lender who knowingly makes charges in excess of those permitted by the provisions of this article commits a Class A misdemeanor.

(2) A person, other than a supervised financial organization, who knowingly engages in the business of making consumer loans without a license in violation of the provision of this article applying to authority to make consumer loans (IC 24-4.5-3-502) commits a Class A misdemeanor.

(3) A person who knowingly:

(a) engages in the business of making consumer credit sales, consumer leases, or consumer loans, or of taking assignments of rights against debtors and

(b) undertakes direct collection of payments or enforcement of these rights, without complying with the provisions of this Article concerning notification (IC 24-4.5-6-202) or payment of fees (IC 24-4.5-6-203), commits a Class A infraction. *(Formerly: Acts 1971, P.L.366, SEC.6). As amended by Acts 1978, P.L.2, SEC.2414; P.L.152-1986, SEC.70; P.L.14-1992, SEC.44; P.L.122-1994, SEC.33; P.L.45-1995, SEC.14.*

### 24-4.5-5-302 Disclosure violations

**Sec. 302.** A person commits a Class A misdemeanor if he knowingly gives false or inaccurate information or fails to provide information which he is required to disclose under the provisions of IC 24-4.5-2-301 or IC 24-4.5-3-301. *(Formerly: Acts 1971, P.L.366, SEC.6). As amended by Acts 1978, P.L.2, SEC.2415; P.L.247-1983, SEC.21.*

Hold for future use.

## CHAPTER 6. Administration.

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## Part 1. Powers and Functions of Department

### 24-4.5-6-101 Short title

Sec. 101. Short Title—This Chapter shall be known and may be cited as Uniform Consumer Credit Code - Administration. (*Formerly: Acts 1971, P.L.366, SEC.7*).

### 24-4.5-6-102 Applicability

Sec. 102. (a) IC 24-4.5-6-101 through IC 24-4.5-6-117 apply to persons who in this State:

(1) make or solicit consumer credit sales, consumer leases, consumer loans, consumer related sales (IC 24-4.5-2-602) and consumer related loans (IC 24-4.5-3-602); or

(2) directly collect payments from or enforce rights against debtors arising from sales, leases, or loans specified in subsection (1), wherever they are made.

(b) For purposes of IC 24-4.5-6-101 through IC 24-4.5-6-117:

(1) “**Consumer credit sale**” includes a sale of an interest in land which is a mortgage transaction if the sale is otherwise a consumer credit sale.

(2) “**Consumer loan**” includes a loan secured by an interest in land which is a mortgage transaction if the loan is otherwise a consumer loan. (*Formerly: Acts 1971, P.L.366, SEC.7*). *As amended by Acts 1981, P.L.218, SEC.8; P.L.152-1986, Sec.71.*

### 24-4.5-6-103 Department

Sec. 103. Department—“**Department**” means The Department of Financial Institutions. A Division of Consumer Credit shall replace the Division of Small Loans within the Department, and shall have charge of the administration of this Article. (*Formerly: Acts 1971, P.L.366, SEC.7*). *As amended by P.L.14-1992, SEC.45.*

### 24-4.5-6-103.5 Director

Sec. 103.5 Director—“**Director**” means the director of the department of financial institutions. *As added by P.L. 80-1998, SEC.9.*

### 24-4.5-6-104 Powers of department; reliance on rules; duty to report

Sec. 104. (1) In addition to other powers granted by this Article, the department within the limitations provided by law may:

(a) receive and act on complaints, take action designed to obtain voluntary compliance with this Article, or commence proceedings on the department’s own initiative;

(b) counsel persons and groups on their rights and duties under this article;

(c) establish programs for the education of consumers with respect to credit practices and problems;

- (d) make studies appropriate to effectuate the purposes and policies of this article and make the results available to the public;
- (e) adopt, amend, and repeal substantive rules when specifically authorized by this article, and adopt, amend, and repeal procedural rules to carry out the provisions of this article;
- (f) maintain more than one (1) office within Indiana; and
- (g) appoint any necessary attorneys, hearing examiners, clerks, and other employees and agents and fix their compensation, and authorize attorneys appointed under this section to appear for and represent the department in court.

(2) No liability is imposed under this article for an act done or omitted in conformity with a rule, written notice, written opinion, written interpretation, or written directive of the department notwithstanding that after the act or omission the rule, written opinion, written interpretation, or written directive may be amended or repealed, or be determined by judicial or other authority to be invalid for any reason. *(Formerly: Acts 1971, P.L.366, SEC.7). As amended by P.L.247-1983, SEC.22; P.L.14-1992, SEC.46; P.L.45-1995, SEC.15; P.L.172-1997, SEC.9.*

#### **24-4.5-6-105 Administrative powers with respect to supervised financial organizations**

Sec. 105. Administrative Powers with Respect to Supervised Financial Organizations (1) With respect to supervised financial organizations the powers of examination and investigation (IC 24-4.5-3-506 and IC 24-4.5-6-106) and administrative enforcement (IC 24-4.5-6-108) shall be exercised by the department. The department may, at its discretion, accept any examination of any financial institution made by a federal authority in lieu of the examination made under the provisions of this Article. All other powers of the department under this Article may be exercised by him with respect to a supervised financial organization.

(2) If the department receives a complaint or other information concerning non-compliance with this Article by a supervised financial organization, he shall inform the official or agency having supervisory authority over the organization concerned. The department may request information about supervised financial organizations from the officials or agencies supervising them.

(3) The department and any official or agency of this State having supervisory authority over a supervised financial organization are authorized and directed to consult and assist one another in maintaining compliance with this Article. They may jointly pursue investigations, prosecute suits, and take other official action, as they deem appropriate, if either of them otherwise is empowered to take the action. *(Formerly: Acts 1971, P.L.366, SEC.7). As amended by P.L.14-1992, SEC.47.*

#### **24-4.5-6-106 Examinations**

Sec. 106. Examinations— (1) In administering this Article and in order to determine whether the provisions of this Article are being complied with by persons engaging in acts subject to this Article, the department may examine the books and records of persons and may make investigations of persons as may be necessary to determine compliance. The department may administer oaths or affirmations, subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation. The department shall determine the sufficiency of the records and whether the person has made the required information reasonably available. The records pertaining to any transaction subject to this article shall be retained for two (2) years after making the final entry relating to the consumer credit transaction, but in the case of a revolving loan account or revolving charge account, the two (2) years is measured from the date of each entry.

(2) The department may assess to a person that is subject to IC 24-4.5-6-201, IC 24-4.5-6-202, and IC 24-3.5-6-203 an examination fee as established by the department under IC 28-11-3-5 for each day or partial day by which the examination exceeds three (3) days per location to be examined. However, the examination fee provided for in this subsection is payable only to the extent that the fee exceeds the amount of the filing fees paid most recently under IC 24-4.5-6-203.

(3) The department shall be given free access to the records wherever located. If the person's records are located outside Indiana, the records shall be made available to the department at a convenient location within Indiana, or the person shall pay the reasonable and necessary expenses for the department or its representative to examine them where they are maintained. The department may designate comparable officials of the state in which the records are located, to inspect them on behalf of the department.

(4) Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the department may apply to (any civil) court for an order compelling compliance.

(5) The department shall not make public the name or identity of a person whose acts or conduct he investigates pursuant to this section or the facts disclosed in the investigation, but this subsection does not apply to disclosures in actions or enforcement proceedings pursuant to this Article. *(Formerly: Acts 1971, P.L.366, SEC.7). As amended by P.L.14-1992, SEC.48; P.L.122-1994, SEC.34; P.L.45-1995, SEC.16.*

### **24-4.5-6-107 Administrative procedure**

Sec. 107. Except as otherwise provided, IC 4-21.5-3 governs all agency action taken by the department under IC 24-4.5-6 or IC 24-4.5-3-501 through IC 24-4.5-3-513. The provisions of IC 4-22.2 prescribing procedures for the adoption of rules by agencies shall apply to the adoption of rules by the department of financial institutions under this article. However, if the department declares an emergency in the document containing the rule, it may adopt rules permitted by IC 24-4.5-6 under IC 422-2-37.1. *(Formerly: Acts 1971, P.L.366, SEC.7). As amended by P.L.31-1985, SEC.48; P.L.7-1987, SEC.108; P.L.14-1992, SEC.49.*

### **24-4.5-6-108 Administrative enforcement orders**

Sec. 108. Administrative Enforcement Orders—(1) After notice and hearing the department may order a creditor or a person acting in his behalf to cease and desist from engaging in violations of this Article. A respondent aggrieved by an order of the department may obtain judicial review of the order and the department may obtain an order of the court for enforcement of its order in any civil court. The proceeding for review or enforcement is initiated by filing a petition in the court. Copies of the petition shall be served upon all parties of record.

(2) Within thirty (30) days after service of the petition for review upon the department, or within any further time the court may allow, the department shall transmit to the court the original or a certified copy of the entire record upon which the order is based, including any transcript of testimony, which need not be printed. By stipulation of all parties to the review proceeding, the record may be shortened. After hearing the court may

(a) reverse or modify the order if the findings of fact of the department are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record,

(b) grant any temporary relief or restraining order it deems just, and

(c) enter an order enforcing, modifying, and enforcing as modified, or setting aside in whole or in part the order of the department, or remanding the case to the department for further proceedings.

(3) An objection not urged at the hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown. A party may move the court to remand the case to the department in the interest of justice for the purpose of adducing additions specified and material evidence and seeking finding thereon upon good cause shown for the failure to adduce this evidence before the department.



(4) The jurisdiction of the court shall be exclusive and its final judgment or decree shall be subject to review by the court on appeal in the same manner and form and with the same effect as in appeals from a final judgment or decree. The department's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

(5) A proceeding for review under this section must be initiated within thirty (30) days after a copy of the order of the department is received. If no proceeding is so initiated, the department may obtain a decree of the civil court for enforcement of its order upon a showing that an order was issued in compliance with this section, that no proceeding for review was initiated within thirty (30) days after copy of the order was received, and that the respondent is subject to the jurisdiction of the court.

(6) With respect to unconscionable agreements or fraudulent or unconscionable conduct by the respondent, the department may not issue an order pursuant to this section but may bring a civil action for an injunction (24-4.5-6-111). *(Formerly: Acts 1971, P.L.366, SEC.7). As amended by P.L.14-1992, SEC.50.*

#### **24-4.5-6-109 Assurance of discontinuance**

Sec. 109. Assurance of Discontinuance—If it is claimed that a person has engaged in conduct subject to an order by the department (IC 24-4.5-6-108) or by a court (IC 24-4.5-6-110 through IC 24-4.5-6-112), the department may accept an assurance in writing that the person will not engage in the conduct in the future. If a person giving an assurance of discontinuance fails to comply with its terms, the assurance is evidence that prior to the assurance he engaged in the conduct described in the assurance. *(Formerly: Acts 1971, P.L.366, SEC.7). As amended by P.L.14-1992, SEC.51.*

#### **24-4.5-6-110 Injunctions against violation of article**

Sec. 110. Injunctions Against Violation of Article —The department may bring a civil action to restrain a person from violating this Article and for other appropriate relief. *(Formerly: Acts 1971, P.L.366, SEC.7). As amended by P.L.14-1992, SEC.52.*

#### **24-4.5-6-111 Injunctions against unconscionable agreements and fraudulent or unconscionable conduct**

Sec. 111. Injunctions Against Unconscionable Agreements and Fraudulent or Unconscionable Conduct—(1) The department may bring a civil action to restrain a creditor or a person acting in behalf of a creditor from engaging in a course of

- (a) making or enforcing unconscionable terms or provisions of consumer credit sales, consumer leases, or consumer loans;
- (b) fraudulent or unconscionable conduct in inducing debtors to enter into consumer credit sales, consumer leases, or consumer loans; or
- (c) fraudulent or unconscionable conduct in the collection of debts arising from consumer credit sales, consumer leases, or consumer loans.

(2) In an action brought pursuant to this section the court may grant relief only if it finds:

- (a) that the respondent has made unconscionable agreements or has engaged or is likely to engage in a course of fraudulent or unconscionable conduct;

- (b) that the agreements or conduct of the respondent has caused or is likely to cause injury to consumers; and
  - (c) that the respondent has been able to cause or will be able to cause the injury primarily because the transactions involved are credit transactions.
- (3) In applying this section, consideration shall be given to each of the following factors, among others:
- (a) belief by the creditor at the time consumer credit sales, consumer leases, or consumer loans are made that there was no reasonable probability of payment in full of the obligation by the debtor;
  - (b) in the case of consumer credit sales or consumer leases, knowledge by the seller or lessor at the time of the sale or lease of the inability of the buyer or lessee to receive substantial benefits from the property or services sold or leased;
  - (c) in the case of consumer credit sales or consumer leases, gross disparity between the price of the property or services sold or leased and the value of the property or services measured by the price at which similar property or services are readily obtainable in credit transactions by like buyers or lessees;
  - (d) the fact that the creditor contracted for or received separate charges for insurance with respect to consumer credit sales or consumer loans with the effect of making the sales or loans, considered as a whole, unconscionable; and
  - (e) the fact that the respondent has knowingly taken advantage of the inability of the debtor reasonably to protect his interest by reason of physical or mental infirmities, ignorance, illiteracy or inability to understand the language of the agreement, or similar factors.
- (4) In an action brought pursuant to this section, a charge or practice expressly permitted by this Article is not in itself unconscionable. *(Formerly: Acts 1971, P.L.366, SEC.7). As amended by P.L.14-1992, SEC.53; P.L.122-1994, SEC.35.*

### **24-4.5-6-112 Temporary relief**

Sec. 112. Temporary Relief—With respect to an action brought to enjoin violations of the Article (IC 24-4.5-6-110) or unconscionable agreements, or fraudulent or unconscionable conduct (IC 24-4.5-6-111), the department may apply to the court for appropriate temporary relief against a respondent, pending final determination of proceedings. If the court finds after a hearing held upon notice to the respondent that there is reasonable cause to believe that the respondent is engaging in or is likely to engage in conduct sought to be restrained, it may grant any temporary relief or restraining order it deems appropriate. *(Formerly: Acts 1971, P.L.366, SEC.7). As amended by P.L.14-1992, SEC.54.*

### **24-4.5-6-113 Civil actions by department**

Sec. 113. Civil Actions by department—(1) After demand, the department may bring a civil action against a creditor for making or collecting charges in excess of those permitted by this Article. An action may relate to transactions with more than one debtor. If it is found that an excess charge has been made, the court shall order the respondent to refund to the debtor or debtors the amount of the excess charge. If a creditor has made an excess charge in deliberate violation of or in reckless disregard for this Article, or if a creditor has refused to refund an excess charge within a reasonable time after demand by the debtor or the department, the court may also order the respondent to pay to the debtor or debtors civil penalty in an amount determined by the court not in excess of the greater of either the amount of the credit service or loan finance charge or ten (10) times the amount of the charge. Refunds and

penalties to which the debtor is entitled pursuant to this subsection may be set off against the debtor's obligation. If a debtor brings an action against a creditor to recover an excess charge or civil penalty, an action by the department to recover for the same excess charge or civil penalty shall be stayed while the debtor's action is pending and shall be dismissed if the debtor's action is dismissed with prejudice or results in a final judgment granting or denying the debtor's claim. With respect to excess charges arising from sales made pursuant to revolving charge accounts or from loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than two (2) years after the time the excess charge was made. With respect to excess charges arising from other consumer credit sales or consumer loans, no action pursuant to this subsection may be brought more than one (1) year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made. If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error, no liability to pay a penalty shall be imposed under this subsection.

(2) The department may bring a civil action against a creditor or a person acting in his behalf to recover a civil penalty for willfully violating this Article, and if the court finds that the defendant has engaged in a course of repeated and willful violations of this Article, it may assess a civil penalty of no more than five thousand dollars (\$5,000). No civil penalty pursuant to this subsection may be imposed for violations of this Article occurring more than two (2) years before the action is brought or for making unconscionable agreements or engaging in a course of fraudulent or unconscionable conduct. *(Formerly: Acts 1971, P.L.366, SEC.7). As amended by P.L.14-1992, SEC.55.*

#### **24-4.5-6-114 Jury trial**

Sec. 114. Jury Trial—In an action brought by the department under this Article, the defendant has no right to trial by jury. *(Formerly: Acts 1971, P.L.366, SEC.7). As amended by P.L.14-1992, SEC.56.*

#### **24-4.5-6-115 Debtor's remedies not affected**

Sec. 115. Debtor's Remedies Not Affected—The grant of powers to the department in this Article does not affect remedies available to debtors under this Article or under other principles of law or equity. *(Formerly: Acts 1971, P.L.366, SEC.7). As amended by P.L.14-1992, SEC.57.*

#### **24-4.5-6-116 Venue**

Sec. 116. Venue—The department may bring actions or proceedings in a court in a county in which an act on which the action or proceeding is based occurred or in a county in which respondent resides or transacts business or in a county otherwise authorized by rule or venue laws. *(Formerly: Acts 1971, P.L.366, SEC.7). As amended by P.L.14-1992, SEC.58.*

#### **24-4.5-6-117 "Civil court" defined**

Sec. 117. "Civil court" defined **"Civil court"** means any court of Indiana having civil jurisdiction except justices of the peace. *(Formerly: Acts 1971, P.L.366, SEC.7). As amended by P.L.1-1990, SEC.244.*

## Part 2. Notification and Fees

### 24-4.5-6-201 Applicability

Sec. 201 Applicability— (1) This section, IC 24-4.5-6-202, and IC 24-4.5-6-203 apply to a person including a supervised financial organization, engaged in Indiana in any of the following:

- (a) Making consumer credit sales, consumer leases, or consumer loans.
- (b) Taking assignments of rights against debtors that arise from sales, leases, or loans by a person having an office or a place of business in Indiana, and undertaking direct collection of payments from the debtors or enforcement of rights against the debtors.
- (c) Placing consumer credit insurance, receiving commissions for consumer credit insurance, or acting as an agent in the sale of consumer credit insurance.

(2) This section, IC 24-4.5-6-202, and IC 24-4.5-6-203 are not applicable to a seller whose credit sales consist entirely of sales made pursuant to a seller credit card issued by a person other than the seller if the issuer of the card has complied with the provisions of this section, IC 24-4.5-6-202, and IC 24-4.5-6-203.

(3) This section, IC 24-4.5-6-202, and IC 24-4.5-6-203 apply to a seller whose credit sales are made using credit cards that:

- (a) are issued by a lender;
- (b) are in the name of the seller; and
- (c) can be used by the buyer or lessee only for purchases or leases at locations of the named seller.

*(Formerly: Acts 1971, P.L.366, SEC.7; Acts 1972, P.L.182, SEC.3). As amended by P.L.152-1986, SEC.72; P.L.14-1992, SEC.59; P.L.122-1994, SEC.36; P.L.176-1996, SEC.10.*

### 24-4.5-6-202 Notification

Sec. 202. (1) Persons subject to IC 24-4.5-6-201, this section, and IC 24-4.5-6-203 shall file notification with the department within thirty (30) days after commencing business in this state, and thereafter, on or before January 31 of each year. The notification shall state:

- (a) name of the person;
- (b) name in which business is transacted if different from subdivision (a);
- (c) address of principal office, which may be outside this state; and
- (d) address of all offices or retail stores, if any, in this state at which consumer credit sales, consumer leases, or consumer loans are made, or in the case of a person taking assignments of obligations, the offices or places of business within this state at which business is transacted:

(2) If information in a notification becomes inaccurate after filing, no further notification is required until the following January 31.

(3) Persons subject to IC 24-4.5-6-201, IC 24-4.5-6-203 and this section, shall notify the department not later

than thirty (30) days after the person:

- (a) has a change in name, address, or principals;
- (b) opens a new branch, closes an existing branch, or relocates an existing branch;
- (c) files for bankruptcy or reorganization;
- (d) is notified that the person is subject to revocation or suspension proceedings by a state or governmental authority with regard to the person's activities;
- (e) is under a felony indictment related to the person's activities; or
- (f) has been convicted of a felony related to the person's activities.

*(Formerly: Acts 1971, P.L.366, SEC.7). As amended by P.L.152-1986, SEC.73; P.L.14-1992, SEC.60; P.L.122-1994, SEC.37; P.L.134/63-2001, SEC.4.*

### **24-4.5-6-203 Fees**

Sec. 203. (1) Persons required to file notification who are sellers, lessors, or lenders shall pay a fee to be prescribed by the department. The fee shall be a uniform amount for each one hundred thousand dollars (\$100,000), or part thereof, in excess of one hundred thousand dollars (\$100,000), of the original unpaid balances arising from consumer credit sales, consumer leases, and consumer loans made in this state within the preceding calendar year and held either by the seller, lessor, or lender for more than thirty (30) days after the inception of the sales, lease, or loan giving rise to the obligations, or by an assignee who has not filed notification. A refinancing of a sale, lease, or loan resulting in an increase in the amount of an obligation is a new sale, lease, or loan to the extent of the increase. In prescribing the fee the administrator shall consider the costs and expense incurred or estimated to be incurred by the department in the administration of this article, including, but not limited to, the supervision, regulation and examination of persons subject to the provisions of the article.

(2) Persons required to file notification who are assignees shall pay a fee as prescribed and fixed by the department under subsection (1) on the unpaid balances at the time of the assignment of obligations arising from consumer credit sales, consumer leases, and consumer loans made in this state taken by assignment during the preceding calendar year, but an assignee need not pay a fee with respect to an obligation on which the assignor or other person has already paid a fee.

(3) Persons required to file notification who are assignors shall pay a fee as prescribed by the department under subsection (1) on the unpaid balances at the time of the assignment of obligations arising from consumer credit sales, consumer leases, and consumer loans made in Indiana during the preceding calendar year unless the assignee has already paid the fees.

(4) Persons required to renew a license by IC 24-4.5-3-503 may deduct the fees paid under IC 24-4.5-3-503(4)(a) through IC 24-4.5-3-504(4)(c) from fees paid under this section.

(5) A person that is required to file notification under section 6-202 of this chapter shall pay a fee at the same rate as prescribed and fixed by the department under subsection (1) on the unpaid balances of all closed end credit obligations originating from the person's place of business during the calendar year preceding the notification, unless the fees for the obligations have been paid by another person. *(Formerly: Acts 1971, P.L.366, SEC.7.) As amended by Acts 1977, P.L.269, SEC.1; P.L.247-1983, SEC.23; P.L.14-1992, SEC.61; P.L.122-1994, SEC.38.*

**24-4.5-6-204 Application to payment for attorneys' services**

Sec. 204. IC 24-4.5-6-201, IC 24-4.5-6-202, and IC 24-4.5-6-203 are not applicable to payment for services performed by attorneys. *As added by P.L.153-1986, SEC.3.*

# CHAPTER 7. Small Loans.

## (Part 1. General Provisions)

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## Part 1. General Provisions

### 24-4.5-7-101 Short title

Sec. 101. Short Title— This chapter shall be known and may be cited as Uniform Consumer Credit Code — Small Loans. *As added by P.L.38-2002, SEC.1.*

**24-4.5-7-102 Scope**

Sec. 102. (1) Except as otherwise provided, all provisions of this article applying to consumer loans apply to small loans, as defined in this chapter. *As added by P.L.38-2002, SEC.1.*

(2) This chapter applies to:

- (a) all persons licensed to make loans under this article or to any person who facilitates, enables, or acts as a conduit for any lender who is or may be exempt from licensing under IC 24-4.5-3-502;
- (b) a bank, savings association, credit union, or other state or federally regulated financial institution except those that are specifically exempt regarding limitations on interest rates and fees; or
- (c) a person, if the department determines that a transaction is:
  - (i) in substance a disguised loan; or
  - (ii) the application of subterfuge for the purpose of avoiding this chapter.

*As added by P.L.38-2002, SEC.1.*

**24-4.5-7-103 Definitions in chapter**

Sec. 103. The following definitions apply to this chapter:

"Small loan" .....	Section 7-104
"Principal" .....	Section 7-105
"Check" .....	Section 7-106
"Renewal" .....	Section 7-107
"Consecutive small loan" .....	Section 7-108
"Paid in full" .....	Section 7-109
"Monthly net income" .....	Section 7-110

*As added by P.L.38-2002, SEC.1.*

**24-4.5-7-104 Definition; "small loan"**

Sec. 104. "Small loan" means a loan:

- (a) with a principal loan amount that is more than fifty dollars (\$50) and less than four hundred one dollars (\$401); and
- (b) in which the lender holds the borrower's check under an agreement, either express or implied, for a specific period before the lender:
  - (i) offers the check for deposit or presentment; or
  - (ii) seeks authorization to transfer or withdraw funds from the borrower's account.

*As added by P.L.38-2002, SEC.1.*

**24-4.5-7-105 Definition; "principal"**

Sec. 105. "Principal" means the total of:



- (a) the net amount paid to, receivable by, or paid or payable from the account of the consumer; and
- (b) to the extent that the payment is deferred, the additional charges permitted by this chapter that are not included in subdivision (a). *As added by P.L.38-2002, SEC.1.*

**24-4.5-7-106 Definition; “check”**

Sec. 106. For purposes of this chapter, "check" has the meaning set forth in IC 26-1-3.1-104. *As added by P.L.38-2002, SEC.1.*

**24-4.5-7-107 Definition; “renewal”**

Sec. 107. "Renewal" refers to a small loan that takes the place of an existing small loan by:

- (a) renewing;
- (b) repaying;
- (c) refinancing; or
- (d) consolidating;

a small loan with the proceeds of another small loan made to the same consumer by a lender. *As added by P.L.38-2002, SEC.1.*

**24-4.5-7-108 Definition; “consecutive small loan”**

Sec. 108. "Consecutive small loan" means a new small loan agreement that the lender enters with the same consumer not later than seven (7) calendar days after a previous small loan made to that customer is paid in full. *As added by P.L.38-2002, SEC.1.*

**24-4.5-7-109 Definition; “paid in full”**

Sec. 109. "Paid in full" means the termination of a small loan through the payment of the consumer's check by the drawee bank or authorized electronic transfer, the return of a check to a consumer who redeems it for consideration, or any other method of termination. *As added by P.L.38-2002, SEC.1.*

**24-4.5-7-110 Definition; “monthly net income”**

Sec. 110. "Monthly net income" means the income received by the consumer in the four (4) week period preceding the consumer's application for a small loan under this chapter and exclusive of any income other than regular net pay received, or as otherwise determined by the department. *As added by P.L.38-2002, SEC.1.*

Hold for future use.

## Part 2. Maximum Charges

### 24-4.5-7-201 Loan finance charge for small loans

Sec. 201. (1) Finance charges on the first one hundred dollars (\$100) of a small loan are limited to fifteen percent (15%) of the principal.

(2) Finance charges on the amount of a small loan greater than one hundred dollars (\$100) are limited to ten percent (10%) of the amount over one hundred dollars (\$100).

(3) The total amount of finance charges may not exceed thirty-five dollars (\$35). *As added by P.L.38-2002, SEC.1.*

### 24-4.5-7-202 Additional fees

Sec. 202. (1) Notwithstanding any other law, only the following fees may be contracted for and received by the lender on a small loan or subsequent refinancing:

(a) The parties may contract for a delinquency charge of not more than five dollars (\$5) on any installment not paid in full within ten (10) days after its scheduled due date.

(b) A delinquency charge under this section may be collected only once on an installment, however long it remains in default. A delinquency charge may be collected any time after it accrues.

(2) An additional charge may be made not to exceed twenty dollars (\$20) for each return by a bank or other depository institution of a dishonored check, negotiable order of withdrawal, or share draft issued by the consumer. This additional charge may be assessed one (1) time regardless of how many times a check may be submitted by the lender and dishonored. *As added by P.L.38-2002, SEC.1.*

Hold for future use.

## Part 3. Disclosure

### 24-4.5-7-301 Applicability; information required

Sec. 301. (1) For purposes of this section, the lender shall disclose to the consumer to whom credit is extended with respect to a small loan the information required by the Federal Consumer Credit Protection Act.

(2) In addition to the requirements of subsection (1), the lender must conspicuously display in bold type a notice to the public both in the lending area of each business location and in the loan documents the following statement:

**"WARNING: A small loan is not intended to meet long term financial needs. A small loan should be used only to meet short term cash needs. Renewing the small loan rather than paying the debt in full will require additional finance charges. The cost of your small loan may be higher than loans offered by other lending institutions. Small loans are regulated by the State of Indiana Department of Financial Institutions.**

A consumer may rescind a small loan without cost not later than the end of the business day immediately following the day on which the small loan was made. To rescind a small loan, a consumer must inform the lender that the consumer wants to rescind the small loan, and the consumer must return the cash amount of the principal of the small loan to the lender."

(3) The statement required in subsection (2) must be in:

(a) 14 point bold face type in the loan documents; and

(b) not less than one (1) inch bold print in the lending area of the business location.

*As added by P.L.38-2002, SEC.1.*

Hold for future use.

## **Part 4. Limitations on Agreements and Practices**

### **24-4.5-7-401 Term**

Sec. 401. (1) Except as provided in subsection (2), a small loan may not be made for a term of less than fourteen (14) days.

(2) After the consumer's third consecutive small loan renewal, another small loan may not be made to that consumer within seven (7) days after the date of the third consecutive small loan unless the new small loan is for a term of twenty-eight (28) days or longer. *As added by P.L.38-2002, SEC.1.*

### **24-4.5-7-402 Consumer income requirement / Rescission**

Sec. 402. (1) A lender is prohibited from making a small loan to a consumer if the total payable amount of the small loan exceeds twenty percent (20%) of the consumer's monthly net income.

(2) A small loan may be secured by only one (1) check or electronic debit per small loan. The check or electronic debit may not exceed the amount advanced to or on behalf of the consumer plus loan finance charges contracted for and permitted.

(3) A consumer may make partial payments in any amount on the small loan without charge at any time before the due date of the small loan. After each payment is made on a small loan, whether the payment is in part or in full, the lender shall give a signed and dated receipt to the consumer making a payment showing the amount paid and the balance due on the small loan.

(4) The lender shall provide to each consumer a copy of the required loan documents before the disbursement of the loan proceeds.

(5) A consumer may rescind a small loan without cost not later than the end of the business day immediately following the day on which the small loan was made. To rescind a small loan, a consumer must:

(a) inform the lender that the consumer wants to rescind the small loan; and

(b) return the cash amount of the principal of the small loan to the lender.

*As added by P.L.38-2002, SEC.1.*

### **24-4.5-7-403 Security**

Sec. 403. A small loan may not be secured by personal property other than a check or electronic debit. *As added by P.L.38-2002, SEC.1.*

### **24-4.5-7-404 Limitation of loans**

Sec. 404. (1) With respect to a small loan or subsequent refinancing, no lender may permit a person to become obligated under more than one (1) loan agreement with the lender at any time.

(2) A lender shall not make a small loan or subsequent refinancing that, when combined with another outstanding small loan owed to another lender, exceeds a total of four hundred dollars (\$400) when the face amounts of the checks written in connection with each loan are combined into a single sum. A lender shall not make a small loan to a consumer who has two (2) or more small loans outstanding, regardless of the total value of the small loans.

(3) A lender complies with subsection (2) if the consumer represents in writing that the consumer does not have any outstanding small loans with the lender or with any other lender and the lender independently verifies the accuracy of the consumer's written representation through commercially reasonable means. A lender's method of verifying whether a consumer has any outstanding small loans will be considered commercially reasonable if the method includes a manual investigation or an electronic query of:

(a) the lender's own records, including both records maintained at the location where the consumer is applying for the transaction and records maintained at other locations within the state that are owned and operated by the lender; and

(b) available department approved databases.

(4) The excess amount of loan finance charge provided for in agreements in violation of this section is an excess charge for purposes of the provisions concerning effect of violations on rights of parties (IC 24-4.5-5-202) and the provisions concerning civil actions by the department (IC 24-4.5-6-113). *As added by P.L.38-2002, SEC.1.*

#### **24-4.5-7-405 Other business written opinion from director**

Sec. 405. (1) This section does not apply to a business that is licensed by the department for a purpose other than consumer loans.

(2) A lender shall not conduct the business of making small loans under this chapter within an office, suite, room, or place of business where another business is solicited or engaged unless the lender obtains a written opinion from the director of the department that the other business would not be contrary to the best interests of consumers. *As added by P.L.38-2002, SEC.1.*

#### **24-4.5-7-406 Limitation on default charges**

Sec. 406. An agreement with respect to a small loan may not provide for charges as a result of default by the consumer other than those authorized by this chapter. A provision in violation of this section is unenforceable. *As added by P.L.38-2002, SEC.1.*

#### **24-4.5-7-407 Renewal or refinancing**

Sec. 407. (1) A renewal or a refinancing of a small loan requires:

(a) a new contractual agreement;

(b) a new check as security; and

(c) new disclosures under IC 24-4.5-7-301.

(2) If a consumer pays off the small loan in cash or its equivalent, the check that was held as security must be returned to the consumer. *As added by P.L.38-2002, SEC.1.*

#### **24-4.5-7-408 Limitations on renewals**

Sec. 408. (1) A lender may permit a consumer to renew a small loan without a reduction in principal one (1) time.



- (2) After the initial renewal permitted in subsection (1), the lender may renew a small loan with a twenty-five percent (25%) reduction in the renewed principal amount up to three (3) times.
- (3) After the third renewal permitted under subsection (2) is paid in full, the lender may not enter into another small loan with the same consumer for thirty (30) days after the date the third renewal is paid in full.
- (4) If a balance is due on the small loan after the third renewal, the balance that remains is converted to a simple interest consumer loan payable in installments under IC 24-4.5-3.
- (5) A lender may renew a small loan only if the lender has a handwritten statement from the consumer, signed and dated by the consumer, stating:
- (a) that the consumer is unable to repay the current small loan;
  - (b) a specific reason that arose after the date of the origination or renewal of the current small loan that makes the consumer unable to repay the small loan; and
  - (c) that the consumer will be able to repay the small loan at the new maturity date.

The lender is not required to determine the adequacy of the request or the specific reason stated. Preprinted forms are prohibited for the purpose of complying with this section. The department shall notify each lender in writing of the standards necessary to comply with this subsection. *As added by P.L.38-2002, SEC.1.*

#### **24-4.5-7-409 Applicability**

Sec. 409. (1) This section applies to licensees and unlicensed persons.

- (2) IC 26-1-3.1-502.5 , IC 26-2-7 , IC 34-4-30 (before its repeal), IC 34-24-3, and IC 35-43-5 apply to small loans only when a check is used to defraud another person. IC 24-4.5-3-404 does not apply to a small loan.
- (3) A contractual agreement in a small loan transaction must include the language of subsection (2) in 14 point bold type.
- (4) A person who violates this chapter:
- (a) is subject to a civil penalty up to one thousand dollars (\$1,000) imposed by the department;
  - (b) is subject to the remedies provided in IC 24-4.5-5-202 ;
  - (c) commits a deceptive act under IC 24-5-0.5 and is subject to the penalties listed in IC 24-5-0.5 ;
  - (d) has no right to collect, receive, or retain any principal, interest, or other charges from a small loan; however, this subdivision does not apply if the violation is the result of an accident or bona fide error of computation; and
  - (e) is liable to the consumer for actual damages, statutory damages of one thousand dollars (\$1,000) per violation, costs, and attorney's fees; however, this subdivision does not apply if the violation is the result of an accident or bona fide error of computation.
- (5) The department may sue:
- (a) to enjoin any conduct that constitutes or will constitute a violation of this chapter; and
  - (b) for other equitable relief.

(6) The remedies provided in this section are cumulative but are not intended to be the exclusive remedies available to a consumer. A consumer is not required to exhaust any administrative remedies under this section or any other applicable law. *As added by P.L.38-2002, SEC.1.*

### **24-4.5-7-410 Limitations**

Sec. 410. A lender making small loans shall not commit nor cause to be committed any of the following acts:

- (a) Threatening to use or using the criminal process in any state to collect on a small loan.
- (b) Threatening to take action against a consumer that is prohibited by this chapter.
- (c) Making a misleading or deceptive statement regarding a small loan or a consequence of taking a small loan.
- (d) Contracting for and collecting attorney's fees on small loans made under this chapter.
- (e) Altering the date or any other information on a check held as security.
- (f) Using a device or agreement that would have the effect of charging or collecting more fees, charges, or interest than allowed by this chapter, including, but not limited to:
  - (i) entering a different type of transaction with the consumer;
  - (ii) entering into a sales/leaseback arrangement;
  - (iii) catalog sales; or
  - (iv) entering any other transaction with the consumer that is designed to evade the applicability of this chapter.
- (g) Engaging in unfair, deceptive, or fraudulent practices in the making or collecting of a small loan.
- (h) Charging to cash a check representing the proceeds of a small loan.
- (i) Except as otherwise provided in this chapter:
  - (i) accepting the proceeds of a new small loan as payment of an existing small loan provided by the same lender; or
  - (ii) renewing, refinancing, or consolidating a small loan with the proceeds of another small loan made by the same lender.
- (j) Including any of the following provisions in a loan document:
  - (i) A hold harmless clause.
  - (ii) A confession of judgment clause.
  - (iii) A mandatory arbitration clause, unless the terms and conditions of the arbitration have been approved by the director of the department.
  - (iv) An assignment of or order for payment of wages or other compensation for services.

(v) A provision in which the consumer agrees not to assert a claim or defense arising out of contract.

(vi) A waiver of any provision of this chapter.

(k) Selling insurance of any kind in connection with the making or collecting of a small loan. *As added by P.L.38-2002, SEC.1.*

#### **24-4.5-7-411 Finance charge exempt from IC 24-4.5-3-508 and IC 35-45-7**

Sec. 411. Finance charges made in compliance with this chapter are exempt from IC 24-4.5-3-508 and IC 35-45-7. *As added by P.L.38-2002, SEC.1.*

#### **24-4.5-7-412 Check requirements**

Sec. 412. Upon the receipt of a check from a consumer for a small loan, the lender shall immediately stamp the back of the check with an endorsement that states:

"This check is being negotiated as part of a small loan under IC 24-4.5, and any holder of this check takes it subject to the claims and defenses of the maker." *As added by P.L.38-2002, SEC.1.*

#### **24-4.5-7-413 Bond**

Sec. 413. (1) A person engaged in making small loans under this chapter shall post a bond to the department in the amount of fifty thousand dollars (\$50,000) for each location where small loans will be made, up to a maximum bond amount of five hundred thousand dollars (\$500,000).

(2) A bond posted under subsection (1) must continue in effect for five (5) years after the lender ceases operation in Indiana. The bond must be available to pay damages and penalties to a consumer harmed by a violation of this chapter. *As added by P.L.38-2002, SEC.1.*

#### **24-4.5-7-414 Rules**

Sec. 414. The department may adopt rules under IC 4-22-2 to implement this chapter. *As added by P.L.38-2002, SEC.1.*

Hold for future use.

## TITLE 750 DEPARTMENT OF FINANCIAL INSTITUTIONS

LSA Document # 98-70 (E)

### DIGEST

Amends 750 IAC 1-1-1 to change the dollar amounts in the uniform consumer credit code. Authority: IC 4-22-2-37.1(a)(6). Effective July 1, 1998

SECTION 1. 750 IAC 1-1-1 IS AMENDED TO READ AS FOLLOWS:

#### **750 IAC 1-1-1 Dollar amounts in consumer credit code**

**Authority:** IC 24-4.5-1-106; IC 24-4.5-6-107

**Affected:** IC 24-4.5

Sec. 1. The dollar amounts in the Indiana Uniform Consumer Credit Code which are required to be changed by IC 24-4.5-1-106, as amended, shall, on July 1, 1998, be as set forth in each of the following Indiana Uniform Consumer Credit Code sections:

<b>IC 24-4.5 AS AMENDED</b>	<b>DOLLAR AMOUNTS</b>	<b>PROVISION RELATING TO:</b>
2-201(7)	930/3,100	Graduated rate scale (sales)
2-201(8)	33.00	Minimum credit service charge
2-203.5(5)	15.50	Delinquency charge (sales)
2-407(4)	930/3,100	Security interest (sales or leases)
3-201(7)	33.00	Minimum loan finance charge
3-203.5(5)	15.50	Delinquency charge (loans)
3-508(6)	930/3,100	Graduated rate scale (supervised loans)
3-508(6)	33.00	Minimum loan finance charge
3-510(2)	3,100	Land as security (loans)
3-511(2)	930/3,100	Maximum loan term
4-301(4)	930	Property insurance
5-103(7)	3,100	Deficiency judgment

**TITLE 750 DEPARTMENT OF FINANCIAL INSTITUTIONS**

LSA Document # 02-94(E)

**DIGEST**

Amends 750 IAC 1-1-1 to change the dollar amounts in the uniform consumer credit code. Authority: IC 4-22-2-37.1(a)(6). Effective July 1, 2002

SECTION 1. 750 IAC 1-1-1 IS AMENDED TO READ AS FOLLOWS:

**750 IAC 1-1-1 Dollar amounts in consumer credit code**

**Authority:** IC 24-4.5-1-106; IC 24-4.5-6-107

**Affected:** IC 24-4.5

Sec. 1. The dollar amounts in the Indiana Uniform Consumer Credit Code which are required to be changed by IC 24-4.5-1-106, as amended, shall, on July 1, 2002, be as set forth in each of the following Indiana Uniform Consumer Credit Code sections:

<b>IC 24-4.5 AS AMENDED</b>	<b>DOLLAR AMOUNTS</b>	<b>PROVISION RELATING TO:</b>
2-201(7)	960/3,200	Graduated rate scale (sales)
2-201(8)	36.00	Minimum credit service charge
2-203.5(5)	16.00	Delinquency charge (sales)
2-407(4)	960/3,200	Security interest (sales or leases)
3-201(7)	36.00	Minimum loan finance charge
3-203.5(5)	16.00	Delinquency charge (loans)
3-508(6)	960/3,2100	Graduated rate scale (supervised loans)
3-508(6)	36.00	Minimum loan finance charge
3-510(2)	3,200	Land as security (loans)
3-511(2)	960/3,200	Maximum loan term
4-301(4)	960	Property insurance
5-103(7)	3,200	Deficiency judgment

## ARTICLE 4.6 SPECIAL PROVISIONS CONCERNING CERTAIN TRANSACTIONS

### Chapter 1. Interest Limits and Application of Other Laws

- 24-4.6-1-101 Money judgments
- 24-4.6-1-102 Rate in absence of agreement
- 24-4.6-1-103 Date of accrual
- 24-4.6-1-104 Method of computing interest

#### 24-4.6-1-101 Money judgments

Sec. 101. Except as otherwise provided by statute, interest on judgments for money whenever rendered shall be from the date of the return of the verdict or finding of the court until satisfaction at:

(1) the rate agreed upon in the original contract sued upon, which shall not exceed an annual rate of eight percent (8%) even though a higher rate of interest may properly have been charged according to the contract prior to judgment; or

(2) an annual rate of eight percent (8%) if there was no contract by the parties. *(Formerly: Acts 1974, P.L.115, SEC.2). As amended by Acts 1981, P.L.220, SEC.1; P.L.149-1988, SEC.1; P.L.208-1993, SEC.1. (Effective 1/1/94)*

**NOTE: P.L.208-1993, SEC.6, provides:**

“IC 24-4.6-101, IC 34-2-22-1, IC 34-4-16-6, and IC 34-4-16.5-17, as amended by this act, apply to the accrual of interest after December 31, 1993, on any part of a judgment that is unpaid after December 31, 1993, even if the judgment was rendered before January 1, 1994.”

#### 24-4.6-1-102 Rate in absence of agreement

Sec. 102. When the parties do not agree on the rate, interest on loans or forbearance of money, goods or things in action shall be at the rate of eight percent (8%) per annum until payment of judgment. *(Formerly: Acts 1974, P.L.115, SEC.2).*

#### 24-4.6-1-103 Date of accrual

**Sec. 103.** Interest at the rate of eight percent (8%) per annum shall be allowed:

- (a) From the date of settlement on money due on any instrument in writing which does not specify a rate of interest and which is not covered by IC 1971, 24-4.5 or this article;
- (b) And from the date an itemized bill shall have been rendered and payment demanded on an account stated, account closed or for money had and received for the use of another and retained without his consent. *(Formerly: Acts 1974, P.L.115, SEC.2).*

**24-4.6-1-104 Computation of interest; methods**

Sec. 104. (a) The parties may agree upon any method of computing interest on a loan or a forbearance of money, goods or things in action if the amount of interest on the unpaid balances of the principal does not exceed any limitation imposed by law upon charges incident to the extension of credit.

(b) Methods of computing interest to which parties may agree under this section include the following:

(1) Simple interest on the unpaid balances of the principal.

(2) Simple interest on the outstanding balance of the principal to which is added past due installments of interest, the sum of which forms the principal upon which interest thereafter shall be computed. The addition to principal in this manner may occur repeatedly but not more frequently than daily.

(c) Unless the parties agree otherwise, the method of computing interest agreed upon under this section continues to apply after the term of the loan or forbearance, including after the award of a judgment on the loan or forbearance, until all principal and interest and the amount of any judgment are paid.

(d) If the parties do not agree on the method of computation, interest shall be computed and charged:

(1) at the rate agreed to by the parties or as provided in section 102 of this chapter; and

(2) according to the method described in subsection (b)(2).

*As amended by Acts 1990, P.L. 140-1990, SEC.1, (Effective 07/01/90.)*



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